

AMENDED IN SENATE SEPTEMBER 7, 2011

AMENDED IN SENATE SEPTEMBER 2, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Blumenfield

May 19, 2011

An act to amend Sections 26605 and 30025 of the Government Code, to amend Sections 11355 and 11382 of the Health and Safety Code, to amend Sections 17, 18, 273d, 667.5, 800, 1170, 1170.1, 2933, 3000.08, 3000.09, 3001, 3003, 3056, 3057, 3060.7, 3067, 3073.1, 3450, 3453, 3454, 3455, 3456, 4000, 4019, 4501.1, 4530, 12021.5, and 12025 of, to add Sections 1233.15, 3460, 3465, 4019.2, and 4115.56 to, and to repeal and add Section 2932 of, the Penal Code, to amend Section 9 of Chapter 136 of the Statutes of 2011, and to amend Item 5225-007-0001 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011), relating to criminal justice realignment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Blumenfield. Criminal Justice Realignment of 2011.

(1) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except for persons with a prior or current felony conviction for serious or violent felony, persons required to register as sex offenders, or persons convicted of a crime as part of a sentence enhancement, as specified, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense

shall be punishable by a term of imprisonment is a county in a county jail for 16 months, or two or three years and a felony punishable by a term of imprisonment described in the underlying offense shall be punishable by imprisonment in a county jail. Those persons excepted from this requirement are subject to imprisonment in the state prison.

This bill would additionally require persons with a current or prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious or violent felony, as specified, ~~and persons with prior juvenile adjudication where the defendant was 16 years of age or older at the time of the commission of a serious or violent felony or a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony offense, as specified,~~ to serve the term of imprisonment in the state prison.

(2) Existing law provides that certain specified felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or “gassing” a peace officer are punishable by incarceration in state prison. If Chapter 15 of the Statutes of 2011 becomes operative, certain of those felonies shall instead be punishable by incarceration in county jail.

This bill would make various technical and conforming changes to provisions related to the incarceration of persons for felony convictions in county jail. The bill would make certain felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or “gassing” a peace officer punishable by incarceration in county jail pursuant to Chapter 15 of the Statutes of 2011 instead punishable by incarceration in state prison.

(3) Existing law provides for the enhancement of prison terms for new offenses because of prior prison terms, as specified. If Chapter 15 of the Statutes of 2011 becomes operative, a judge, when imposing a sentence pursuant to these provisions, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.

This bill would provide that a term imposed under the above-referenced provision, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of a specified enhancement, and make conforming changes.

(4) Existing law provides that, except as specified, every felony is punishable by imprisonment in any of the state prisons for 16 months, or 2 or 3 years. If Chapter 15 of the Statutes of 2011 becomes operative, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or 2 or 3 years and where the term is specified for the term described in the underlying offense. Chapter 15 of the Statutes of 2011 requires that the punishment for certain felonies be served in state prison.

This bill would place specified parameters on the imposition of sentences under the provisions added by Chapter 15 of the Statutes of 2011. The bill would provide that when imposing a sentence pursuant to the ~~above-reference~~ *above-referenced* provisions, the court may commit the defendant for term served in custody, as specified, or for a term as determined in accordance with the applicable sentencing law but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer, as specified.

(5) Existing law provides that the moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011. Existing law requires that the moneys be allocated equally by the county or city and county to the district attorney's office and the county public defender's office.

This bill would require that where no public defender's office is established, the moneys be allocated to the county for distribution for the same purpose.

(6) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, applies certain provisions relating to the denial of time credits to persons confined in local facilities pursuant to provisions added by Chapter 15 of the Statutes of 2011 providing for the incarceration of felons in local facilities, as specified.

This bill would repeal the amendments made by Chapter 15 of the Statutes of 2011, restore prior law, and instead subject these felons to other credit provisions applicable to persons confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, as specified. The bill would provide that no credits may be earned for periods of flash incarceration, as specified. The bill would provide that any inmate sentenced to county jail assigned to a conservation camp

who is eligible to earn one day of credit for every one day of incarceration shall instead earn ~~two~~ 2 days of credit for every one day of service and make related changes.

(7) Existing law provides that, except as specified, a prisoner sentenced to state prison under specified provisions, for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits are applicable to the prisoner.

This bill would delete the above-referenced provisions, thereby making other time credit provisions applicable to prisoners confined in or committed to specified local facilities applicable to the above-referenced prisoners.

(8) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except as specified, when specified persons who were not imprisoned for committing a violent felony, as defined, who have been released on parole from the state prison, and who have been on parole continuously for 6 months since release from confinement, within 30 days, shall be discharged from parole.

This bill would additionally make the above provision related to discharge from parole inapplicable to persons who were imprisoned for committing a serious felony or who are required to register as a sex offender, as specified.

(9) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, subjects certain persons released from state prison to the jurisdiction of and parole supervision by the Department of Corrections and Rehabilitation, as specified.

This bill would provide that persons required to register as sex offenders and persons subject to life-time parole, as specified, who are released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to 3 years or the parole term the person was subject to at the time of the commission of the offense. The bill would make other conforming and related changes regarding the parole periods, revocations, search and seizure requirements, and the release of high-risk parolees.

(10) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, makes felons subject to postrelease supervision as established by the Postrelease Community Supervision Act of 2011 eligible to participate in reentry court programs, as specified, and would authorize

counties to contract with the Department of Corrections and Rehabilitation in order to obtain day treatment and crisis care services for inmates with mental health problems who are released on postrelease community supervision.

This bill would instead authorize counties to contract with the department to obtain correctional clinical services. The bill would make changes to the postrelease community supervision agreement, require persons placed on postrelease supervision to be subject to search and seizure, and make other related changes regarding postrelease supervision sanctions, and revocations. The bill would require a supervising agency, upon determining that a person subject to postrelease supervision no longer permanently resides within its jurisdiction, where a change in residence was either approved or did not violate the terms and conditions of postrelease supervision, to transmit, within 2 weeks, the prison release packet to the designated supervising agency in the county in which the person permanently resides. By imposing additional duties on local agencies, the bill would create a state-mandated local program.

(11) Existing law provides that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correction facilities, as specified.

This bill would authorize, upon agreement with the sheriff or director of the county department of corrections, a board of supervisors to enter into a contract with the Department of Corrections and Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes. The bill would provide that when housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.

(12) Existing law provides that, except as specified, an inmate who is released on parole or postrelease supervision shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law requires that specified information be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision. Existing law provides that, except as specified, the department shall be the agency primarily responsible for,

and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) and, if Chapter 15 of the Statutes of 2011 becomes operative, requires county agencies supervising inmates released to postrelease supervision to provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison, as specified.

This bill would additionally require the Department of Corrections and Rehabilitation to submit, via electronic transfer, to the Department of Justice data to be included in the supervised released file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision.

(13) The Budget Act of 2011 reduced the amount appropriated, \$95,254,000, for support of the Department of Corrections and Rehabilitation by \$77,406,000 to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for instate housing of state inmates.

This bill would instead ~~reduced~~ *reduce* the amount appropriated by \$54,200,00 for those purposes.

(14) Existing law requires the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers *of California*, and the Administrative Office of the Courts to make certain calculations, including, among others, the cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison and the statewide probation failure rate.

This bill would additionally require, except for the Joint Legislative Budget Committee, the above-referenced entities to develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 public safety realignment.

(15) This bill would include additional changes proposed by SB 9 and SB 576 contingent on the enactment of those bills.

(16) This bill would appropriate \$1,000 to the Department of Corrections and Rehabilitation for the purpose of state operations.

(17) The bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

(18) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(19) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act is titled and may be cited as the 2011
2 realignment Legislation addressing public safety.
3 SEC. 2. Section 26605 of the Government Code is amended
4 to read:
5 26605. Notwithstanding any other provision of law, except in
6 counties in which the sheriff, as of July 1, 1993, is not in charge
7 of and the sole and exclusive authority to keep the county jail and
8 the prisoners in it, the sheriff shall take charge of and be the sole
9 and exclusive authority to keep the county jail and the prisoners
10 in it including persons confined to the county jail pursuant to
11 subdivision (b) of Section 3454 of the Penal Code for a violation
12 of the terms and conditions of their postrelease community
13 supervision, except for work furlough facilities where by county
14 ordinance the work furlough administrator is someone other than
15 the sheriff.

SEC. 3. Section 30025 of the Government Code is amended to read:

30025. (a) The Local Revenue Fund 2011 is hereby created in the State Treasury and shall receive all revenues, less refunds, derived from the taxes described in Sections 6051.15 and 6201.15; revenues as may be allocated to the fund pursuant to Sections 11001.5 and 11005 of the Revenue and Taxation Code; and other moneys that may be specifically appropriated to the fund.

(b) The Trial Court Security Account, the Local Community Corrections Account, the Local Law Enforcement Services Account, the Mental Health Account, the District Attorney and Public Defender Account, the Juvenile Justice Account, the Health and Human Services Account, and the Reserve Account are hereby created within the Local Revenue Fund 2011.

(c) The Youthful Offender Block Grant Subaccount and the Juvenile Reentry Grant Subaccount are hereby created within the Juvenile Justice Account.

(d) The Adult Protective Services Subaccount, the Foster Care Subaccount, the Child Welfare Services Subaccount, the Adoptions Subaccount, the Adoption Assistance Program Subaccount, the Child Abuse Prevention Subaccount, the Women and Children's Residential Treatment Services Subaccount, the Drug Court Subaccount, the Nondrug Medi-Cal Substance Abuse Treatment Services Subaccount, and the Drug Medi-Cal Subaccount are hereby created within the Health and Human Services Account within the Local Revenue Fund 2011.

(e) Funds transferred to the Local Revenue Fund 2011 and its accounts and subaccounts are, notwithstanding Section 13340, continuously appropriated and shall be allocated pursuant to statute exclusively for Public Safety Services as defined in subdivision (h) and as further limited by statute. The moneys derived from taxes described in subdivision (a) and deposited in the Local Revenue Fund 2011 shall be available to reimburse the General Fund for moneys that are advanced to the Local Revenue Fund 2011. Additionally, all funds deposited in the Local Revenue Fund 2011 and its accounts shall be available to pay for state costs incurred resulting from phasing in the implementation of Chapter 15 of the Statutes of 2011 and to reimburse the state for costs incurred on behalf of a local governmental entity in providing Public Safety Services.

(f) (1) Each county treasurer, city and county treasurer, or other appropriate official shall create a County Local Revenue Fund 2011 for the county or city and county and shall create the Local Community Corrections Account, the Trial Court Security Account, the District Attorney and Public Defender Account, the Juvenile Justice Account, the Health and Human Services Account, and the Supplemental Law Enforcement Account within the County Local Revenue Fund 2011 for the county or city and county.

(2) The moneys in the County Local Revenue Fund 2011 for each county or city and county and its accounts shall be exclusively used for Public Safety Services as defined in subdivision (h) and as further described in this section.

(3) The moneys in the Trial Court Security Account shall be used exclusively to fund trial court security provided by county sheriffs. No general county administrative costs may be charged to this account, including, but not limited to, the costs of administering the account.

(4) The moneys in the Local Community Corrections Account shall be used exclusively to fund the provisions of Chapter 15 of the Statutes of 2011. The moneys within this account shall not be used by local agencies to supplant other funding for Public Safety Services. This account shall be the source of funding for the Postrelease Community Supervision Act of 2011, as enacted by Section 479 of Chapter 15 of the Statutes of 2011, and to fund the housing of parolees in county jails.

(5) The moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011 (Title 2.05 (commencing with Section 3450) of Part 3 of the Penal Code). The moneys shall be allocated equally by the county or city and county to the district attorney's office and county public defender's office or, where no public defender's office is established, to the county for distribution for the same purpose.

(6) The moneys in the Juvenile Justice Account shall only be used to fund activities in connection with the grant programs described in this paragraph.

(A) The Youthful Offender Block Grant Subaccount shall be used to fund grants solely to enhance the capacity of county probation, mental health, drug and alcohol, and other county

1 departments to provide appropriate rehabilitative, housing, and
2 supervision services to youthful offenders, subject to Sections
3 731.1, 733, 1766, and 1767.35 of the Welfare and Institutions
4 Code. Counties, in expending an allocation from this subaccount,
5 shall provide all necessary services related to the custody and
6 parole of the offenders.

7 (B) The Juvenile Reentry Grant Subaccount shall be used to
8 fund grants exclusively to address local program needs for persons
9 discharged from the custody of the Department of Corrections and
10 Rehabilitation, Division of Juvenile Facilities. County probation
11 departments, in expending the Juvenile Reentry Grant allocation,
12 shall provide evidence-based supervision and detention practices
13 and rehabilitative services to persons who are subject to the
14 jurisdiction of the juvenile court, and who were committed to and
15 discharged from the Department of Corrections and Rehabilitation,
16 Division of Juvenile Facilities. “Evidence-based” refers to
17 supervision and detention policies, procedures, programs, and
18 practices demonstrated by scientific research to reduce recidivism
19 among individuals on probation or under postrelease supervision.
20 The funds allocated from this subaccount shall supplement existing
21 services and shall not be used by local agencies to supplant any
22 existing funding for existing services provided by those entities.
23 The funding provided from this subaccount is intended to provide
24 payment in full for all local government costs of the supervision,
25 programming, education, incarceration, or any other cost resulting
26 from persons discharged from custody or held in local facilities
27 pursuant to the provisions of Chapter 729 of the Statutes of 2010.

28 (7) The Health and Human Services Account and its subaccounts
29 described in subdivision (d) shall be used only to fund activities
30 performed in connection with the programs described in this
31 subdivision. The subaccounts shall be used exclusively as follows:

32 (A) The Adult Protective Services Subaccount shall be used to
33 fund adult protective services described in statute and regulation.

34 (B) The Foster Care Subaccount shall be used to fund the
35 administrative costs and cost of foster care grants and services as
36 those services are described in statute and regulation, including
37 the costs for the Title IV-E Child Welfare Waiver Demonstration
38 Capped Allocation Project.

1 (C) The Child Welfare Services Subaccount shall be used to
2 fund the costs of child welfare services as those services are
3 described in statute and regulation.

4 (D) The Adoptions Subaccount shall be used to fund the costs
5 connected with providing adoptive services, including agency
6 adoptions, as described in statute and regulation, including the
7 costs incurred by the county or city and county if the county or
8 city and county elects to contract with the state to provide those
9 services.

10 (E) The Child Abuse Prevention Subaccount shall be used to
11 fund the costs of child abuse prevention, intervention, and treatment
12 services as those costs and services are described in statute and
13 regulation.

14 (F) The Adoption Assistance Program Subaccount shall be used
15 to fund the administrative costs and payments for families adopting
16 children with special needs.

17 (G) The Women and Children's Residential Treatment Services
18 Subaccount shall be used to fund the costs of residential perinatal
19 drug services and treatment as those services and treatment are
20 described in statute and regulation.

21 (H) The Drug Court Subaccount shall be used to fund the costs
22 of drug court operations and services as those costs are currently
23 permitted and described by statute and regulation.

24 (I) The Nondrug Medi-Cal Substance Abuse Treatment Services
25 Subaccount shall be used to fund the costs of nondrug Medi-Cal
26 substance abuse treatment programs, as described in statute and
27 regulation.

28 (J) The Drug Medi-Cal Subaccount shall be used to fund the
29 costs of the Drug Medi-Cal program as that program is described
30 in statute, regulation, or the current State Plan Amendment.

31 (g) The moneys in the Reserve Account shall be used to fund
32 entitlements paid from the Foster Care Subaccount, the Drug
33 Medi-Cal Subaccount and the Adoption Assistance Program
34 Subaccount of the Health and Human Services Account.

35 (h) For purposes of this section, "Public Safety Services" shall
36 include all of the following:

37 (1) Employing public safety officials, prosecutors, public
38 defenders, and court security staff.

1 (2) Managing local jails, housing and treating youthful offenders,
2 and providing services for, and overseeing the supervised release
3 of, offenders.

4 (3) Preventing child abuse, providing services to children who
5 are abused, neglected, or exploited, providing services to vulnerable
6 children and their families, and providing adult protective services.

7 (4) Providing mental health services to children and adults in
8 order to reduce failure in school, harm to themselves and others,
9 homelessness, and preventable incarceration.

10 (5) Preventing, treating, and providing recovery services for
11 alcohol and drug abuse.

12 SEC. 4. Section 11355 of the Health and Safety Code is
13 amended to read:

14 11355. Every person who agrees, consents, or in any manner
15 offers to unlawfully sell, furnish, transport, administer, or give (1)
16 any controlled substance specified in subdivision (b), (c), or (e),
17 or paragraph (1) of subdivision (f) of Section 11054, specified in
18 paragraph (13), (14), (15), or (20) of subdivision (d) of Section
19 11054, or specified in subdivision (b) or (c) of Section 11055, or
20 specified in subdivision (h) of Section 11056, or (2) any controlled
21 substance classified in Schedule III, IV, or V which is a narcotic
22 drug to any person, or who offers, arranges, or negotiates to have
23 any such controlled substance unlawfully sold, delivered,
24 transported, furnished, administered, or given to any person and
25 who then sells, delivers, furnishes, transports, administers, or gives,
26 or offers, arranges, or negotiates to have sold, delivered,
27 transported, furnished, administered, or given to any person any
28 other liquid, substance, or material in lieu of any such controlled
29 substance shall be punished by imprisonment in the county jail for
30 not more than one year, or pursuant to subdivision (h) of Section
31 1170 of the Penal Code.

32 SEC. 5. Section 11382 of the Health and Safety Code is
33 amended to read:

34 11382. Every person who agrees, consents, or in any manner
35 offers to unlawfully sell, furnish, transport, administer, or give any
36 controlled substance which is (a) classified in Schedule III, IV, or
37 V and which is not a narcotic drug, or (b) specified in subdivision
38 (d) of Section 11054, except paragraphs (13), (14), (15), and (20)
39 of subdivision (d), specified in paragraph (11) of subdivision (c)
40 of Section 11056, or specified in subdivision (d), (e), or (f) of

1 Section 11055, to any person, or offers, arranges, or negotiates to
2 have that controlled substance unlawfully sold, delivered,
3 transported, furnished, administered, or given to any person and
4 then sells, delivers, furnishes, transports, administers, or gives, or
5 offers, or arranges, or negotiates to have sold, delivered,
6 transported, furnished, administered, or given to any person any
7 other liquid, substance, or material in lieu of that controlled
8 substance shall be punished by imprisonment in the county jail for
9 not more than one year, or pursuant to subdivision (h) of Section
10 1170 of the Penal Code.

11 SEC. 6. Section 17 of the Penal Code, as amended by Section
12 228 of Chapter 15 of the Statutes of 2011, is amended to read:

13 17. (a) A felony is a crime that is punishable with death, by
14 imprisonment in the state prison, or notwithstanding any other
15 provision of law, by imprisonment in a county jail under the
16 provisions of subdivision (h) of Section 1170. Every other crime
17 or public offense is a misdemeanor except those offenses that are
18 classified as infractions.

19 (b) When a crime is punishable, in the discretion of the court,
20 either by imprisonment in the state prison or imprisonment in a
21 county jail under the provisions of subdivision (h) of Section 1170,
22 or by fine or imprisonment in the county jail, it is a misdemeanor
23 for all purposes under the following circumstances:

24 (1) After a judgment imposing a punishment other than
25 imprisonment in the state prison or imprisonment in a county jail
26 under the provisions of subdivision (h) of Section 1170.

27 (2) When the court, upon committing the defendant to the
28 Division of Juvenile Justice, designates the offense to be a
29 misdemeanor.

30 (3) When the court grants probation to a defendant without
31 imposition of sentence and at the time of granting probation, or
32 on application of the defendant or probation officer thereafter, the
33 court declares the offense to be a misdemeanor.

34 (4) When the prosecuting attorney files in a court having
35 jurisdiction over misdemeanor offenses a complaint specifying
36 that the offense is a misdemeanor, unless the defendant at the time
37 of his or her arraignment or plea objects to the offense being made
38 a misdemeanor, in which event the complaint shall be amended
39 to charge the felony and the case shall proceed on the felony
40 complaint.

1 (5) When, at or before the preliminary examination or prior to
2 filing an order pursuant to Section 872, the magistrate determines
3 that the offense is a misdemeanor, in which event the case shall
4 proceed as if the defendant had been arraigned on a misdemeanor
5 complaint.

6 (c) When a defendant is committed to the Division of Juvenile
7 Justice for a crime punishable, in the discretion of the court, either
8 by imprisonment in the state prison or imprisonment in a county
9 jail under the provisions of subdivision (h) of Section 1170, or by
10 fine or imprisonment in the county jail not exceeding one year,
11 the offense shall, upon the discharge of the defendant from the
12 Division of Juvenile Justice, thereafter be deemed a misdemeanor
13 for all purposes.

14 (d) A violation of any code section listed in Section 19.8 is an
15 infraction subject to the procedures described in Sections 19.6 and
16 19.7 when:

17 (1) The prosecutor files a complaint charging the offense as an
18 infraction unless the defendant, at the time he or she is arraigned,
19 after being informed of his or her rights, elects to have the case
20 proceed as a misdemeanor, or;

21 (2) The court, with the consent of the defendant, determines
22 that the offense is an infraction in which event the case shall
23 proceed as if the defendant had been arraigned on an infraction
24 complaint.

25 (e) Nothing in this section authorizes a judge to relieve a
26 defendant of the duty to register as a sex offender pursuant to
27 Section 290 if the defendant is charged with an offense for which
28 registration as a sex offender is required pursuant to Section 290,
29 and for which the trier of fact has found the defendant guilty.

30 SEC. 7. Section 18 of the Penal Code, as amended by Section
31 230 of Chapter 15 of the Statutes of 2011, is amended to read:

32 18. (a) Except in cases where a different punishment is
33 prescribed by any law of this state, every offense declared to be a
34 felony is punishable by imprisonment for 16 months, or two or
35 three years in the state prison unless the offense is punishable
36 pursuant to subdivision (h) of Section 1170.

37 (b) Every offense which is prescribed by any law of the state
38 to be a felony punishable by imprisonment or by a fine, but without
39 an alternate sentence to the county jail for a period not exceeding

1 one year, may be punishable by imprisonment in the county jail
2 not exceeding one year or by a fine, or by both.

3 SEC. 8. Section 273d of the Penal Code, as amended by Section
4 312 of Chapter 15 of the Statutes of 2011, is amended to read:

5 273d. (a) Any person who willfully inflicts upon a child any
6 cruel or inhuman corporal punishment or an injury resulting in a
7 traumatic condition is guilty of a felony and shall be punished by
8 imprisonment pursuant to subdivision (h) of Section 1170 for two,
9 four, or six years, or in a county jail for not more than one year,
10 by a fine of up to six thousand dollars (\$6,000), or by both that
11 imprisonment and fine.

12 (b) Any person who is found guilty of violating subdivision (a)
13 shall receive a four-year enhancement for a prior conviction of
14 that offense provided that no additional term shall be imposed
15 under this subdivision for any prison term or term imposed under
16 the provisions of subdivision (h) of Section 1170 served prior to
17 a period of 10 years in which the defendant remained free of both
18 the commission of an offense that results in a felony conviction
19 and prison custody or custody in a county jail under the provisions
20 of subdivision (h) of Section 1170.

21 (c) If a person is convicted of violating this section and probation
22 is granted, the court shall require the following minimum
23 conditions of probation:

24 (1) A mandatory minimum period of probation of 36 months.

25 (2) A criminal court protective order protecting the victim from
26 further acts of violence or threats, and, if appropriate, residence
27 exclusion or stay-away conditions.

28 (3) (A) Successful completion of no less than one year of a
29 child abuser's treatment counseling program. The defendant shall
30 be ordered to begin participation in the program immediately upon
31 the grant of probation. The counseling program shall meet the
32 criteria specified in Section 273.1. The defendant shall produce
33 documentation of program enrollment to the court within 30 days
34 of enrollment, along with quarterly progress reports.

35 (B) The terms of probation for offenders shall not be lifted until
36 all reasonable fees due to the counseling program have been paid
37 in full, but in no case shall probation be extended beyond the term
38 provided in subdivision (a) of Section 1203.1. If the court finds
39 that the defendant does not have the ability to pay the fees based

1 on the defendant's changed circumstances, the court may reduce
2 or waive the fees.

3 (4) If the offense was committed while the defendant was under
4 the influence of drugs or alcohol, the defendant shall abstain from
5 the use of drugs or alcohol during the period of probation and shall
6 be subject to random drug testing by his or her probation officer.

7 (5) The court may waive any of the above minimum conditions
8 of probation upon a finding that the condition would not be in the
9 best interests of justice. The court shall state on the record its
10 reasons for any waiver.

11 SEC. 9. Section 667.5 of the Penal Code, as amended by
12 Section 22 of Chapter 39 of the Statutes of 2011, is amended to
13 read:

14 667.5. Enhancement of prison terms for new offenses because
15 of prior prison terms shall be imposed as follows:

16 (a) Where one of the new offenses is one of the violent felonies
17 specified in subdivision (c), in addition to and consecutive to any
18 other prison terms therefor, the court shall impose a three-year
19 term for each prior separate prison term served by the defendant
20 where the prior offense was one of the violent felonies specified
21 in subdivision (c). However, no additional term shall be imposed
22 under this subdivision for any prison term served prior to a period
23 of 10 years in which the defendant remained free of both prison
24 custody and the commission of an offense which results in a felony
25 conviction.

26 (b) Except where subdivision (a) applies, where the new offense
27 is any felony for which a prison sentence or a sentence of
28 imprisonment in a county jail under subdivision (h) of Section
29 1170 is imposed or is not suspended, in addition and consecutive
30 to any other sentence therefor, the court shall impose a one-year
31 term for each prior separate prison term or county jail term imposed
32 under subdivision (h) of Section 1170 or when sentence is not
33 suspended for any felony; provided that no additional term shall
34 be imposed under this subdivision for any prison term or county
35 jail term imposed under subdivision (h) of Section 1170 or when
36 sentence is not suspended prior to a period of five years in which
37 the defendant remained free of both the commission of an offense
38 which results in a felony conviction, and prison custody or the
39 imposition of a term of jail custody imposed under subdivision (h)
40 of Section 1170 or any felony sentence that is not suspended. A

1 term imposed under the provisions of paragraph (5) of subdivision
2 (h) of Section 1170, wherein a portion of the term is suspended
3 by the court to allow postrelease supervision, shall qualify as a
4 prior county jail term for the purposes of the one-year enhancement.

5 (c) For the purpose of this section, “violent felony” shall mean
6 any of the following:

7 (1) Murder or voluntary manslaughter.

8 (2) Mayhem.

9 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
10 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
11 262.

12 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

13 (5) Oral copulation as defined in subdivision (c) or (d) of Section
14 288a.

15 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
16 of Section 288.

17 (7) Any felony punishable by death or imprisonment in the state
18 prison for life.

19 (8) Any felony in which the defendant inflicts great bodily injury
20 on any person other than an accomplice which has been charged
21 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
22 on or after July 1, 1977, or as specified prior to July 1, 1977, in
23 Sections 213, 264, and 461, or any felony in which the defendant
24 uses a firearm which use has been charged and proved as provided
25 in subdivision (a) of Section 12022.3, or Section 12022.5 or
26 12022.55.

27 (9) Any robbery.

28 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

29 (11) Sexual penetration as defined in subdivision (a) or (j) of
30 Section 289.

31 (12) Attempted murder.

32 (13) A violation of Section 12308, 12309, or 12310.

33 (14) Kidnapping.

34 (15) Assault with the intent to commit a specified felony, in
35 violation of Section 220.

36 (16) Continuous sexual abuse of a child, in violation of Section
37 288.5.

38 (17) Carjacking, as defined in subdivision (a) of Section 215.

39 (18) Rape, spousal rape, or sexual penetration, in concert, in
40 violation of Section 264.1.

1 (19) Extortion, as defined in Section 518, which would constitute
2 a felony violation of Section 186.22 of the Penal Code.

3 (20) Threats to victims or witnesses, as defined in Section 136.1,
4 which would constitute a felony violation of Section 186.22 of the
5 Penal Code.

6 (21) Any burglary of the first degree, as defined in subdivision
7 (a) of Section 460, wherein it is charged and proved that another
8 person, other than an accomplice, was present in the residence
9 during the commission of the burglary.

10 (22) Any violation of Section 12022.53.

11 (23) A violation of subdivision (b) or (c) of Section 11418. The
12 Legislature finds and declares that these specified crimes merit
13 special consideration when imposing a sentence to display society's
14 condemnation for these extraordinary crimes of violence against
15 the person.

16 (d) For the purposes of this section, the defendant shall be
17 deemed to remain in prison custody for an offense until the official
18 discharge from custody or until release on parole, whichever first
19 occurs, including any time during which the defendant remains
20 subject to reimprisonment for escape from custody or is
21 reimprisoned on revocation of parole. The additional penalties
22 provided for prior prison terms shall not be imposed unless they
23 are charged and admitted or found true in the action for the new
24 offense.

25 (e) The additional penalties provided for prior prison terms shall
26 not be imposed for any felony for which the defendant did not
27 serve a prior separate term in state prison or in a county jail under
28 subdivision (h) of Section 1170.

29 (f) A prior conviction of a felony shall include a conviction in
30 another jurisdiction for an offense which, if committed in
31 California, is punishable by imprisonment in the state prison or in
32 county jail under subdivision (h) of Section 1170 if the defendant
33 served one year or more in prison for the offense in the other
34 jurisdiction. A prior conviction of a particular felony shall include
35 a conviction in another jurisdiction for an offense which includes
36 all of the elements of the particular felony as defined under
37 California law if the defendant served one year or more in prison
38 for the offense in the other jurisdiction.

39 (g) A prior separate prison term for the purposes of this section
40 shall mean a continuous completed period of prison incarceration

1 imposed for the particular offense alone or in combination with
2 concurrent or consecutive sentences for other crimes, including
3 any reimprisonment on revocation of parole which is not
4 accompanied by a new commitment to prison, and including any
5 reimprisonment after an escape from incarceration.

6 (h) Serving a prison term includes any confinement time in any
7 state prison or federal penal institution as punishment for
8 commission of an offense, including confinement in a hospital or
9 other institution or facility credited as service of prison time in the
10 jurisdiction of the confinement.

11 (i) For the purposes of this section, a commitment to the State
12 Department of Mental Health as a mentally disordered sex offender
13 following a conviction of a felony, which commitment exceeds
14 one year in duration, shall be deemed a prior prison term.

15 (j) For the purposes of this section, when a person subject to
16 the custody, control, and discipline of the Director of Corrections
17 is incarcerated at a facility operated by the Department of the Youth
18 Authority, that incarceration shall be deemed to be a term served
19 in state prison.

20 (k) (1) Notwithstanding subdivisions (d) and (g) or any other
21 provision of law, where one of the new offenses is committed
22 while the defendant is temporarily removed from prison pursuant
23 to Section 2690 or while the defendant is transferred to a
24 community facility pursuant to Section 3416, 6253, or 6263, or
25 while the defendant is on furlough pursuant to Section 6254, the
26 defendant shall be subject to the full enhancements provided for
27 in this section.

28 (2) This subdivision shall not apply when a full, separate, and
29 consecutive term is imposed pursuant to any other provision of
30 law.

31 SEC. 10. Section 667.5 of the Penal Code, as amended by
32 Section 23 of Chapter 39 of the Statutes of 2011, is amended to
33 read:

34 667.5. Enhancement of prison terms for new offenses because
35 of prior prison terms shall be imposed as follows:

36 (a) Where one of the new offenses is one of the violent felonies
37 specified in subdivision (c), in addition to and consecutive to any
38 other prison terms therefor, the court shall impose a three-year
39 term for each prior separate prison term served by the defendant
40 where the prior offense was one of the violent felonies specified

1 in subdivision (c). However, no additional term shall be imposed
2 under this subdivision for any prison term served prior to a period
3 of 10 years in which the defendant remained free of both prison
4 custody and the commission of an offense which results in a felony
5 conviction.

6 (b) Except where subdivision (a) applies, where the new offense
7 is any felony for which a prison sentence or a sentence of
8 imprisonment in a county jail under subdivision (h) of Section
9 1170 is imposed or is not suspended, in addition and consecutive
10 to any other sentence therefor, the court shall impose a one-year
11 term for each prior separate prison term or county jail term imposed
12 under subdivision (h) of Section 1170 or when sentence is not
13 suspended for any felony; provided that no additional term shall
14 be imposed under this subdivision for any prison term or county
15 jail term imposed under subdivision (h) of Section 1170 or when
16 sentence is not suspended prior to a period of five years in which
17 the defendant remained free of both the commission of an offense
18 which results in a felony conviction, and prison custody or the
19 imposition of a term of jail custody imposed under subdivision (h)
20 of Section 1170 or any felony sentence that is not suspended. A
21 term imposed under the provisions of paragraph (5) of subdivision
22 (h) of Section 1170, wherein a portion of the term is suspended
23 by the court to allow postrelease supervision, shall qualify as a
24 prior county jail term for the purposes of the one-year enhancement.

25 (c) For the purpose of this section, “violent felony” shall mean
26 any of the following:

27 (1) Murder or voluntary manslaughter.

28 (2) Mayhem.

29 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
30 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
31 262.

32 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

33 (5) Oral copulation as defined in subdivision (c) or (d) of Section
34 288a.

35 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
36 of Section 288.

37 (7) Any felony punishable by death or imprisonment in the state
38 prison for life.

39 (8) Any felony in which the defendant inflicts great bodily injury
40 on any person other than an accomplice which has been charged

1 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
2 on or after July 1, 1977, or as specified prior to July 1, 1977, in
3 Sections 213, 264, and 461, or any felony in which the defendant
4 uses a firearm which use has been charged and proved as provided
5 in subdivision (a) of Section 12022.3, or Section 12022.5 or
6 12022.55.

7 (9) Any robbery.

8 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

9 (11) Sexual penetration as defined in subdivision (a) or (j) of
10 Section 289.

11 (12) Attempted murder.

12 (13) A violation of Section 18745, 18750, or 18755.

13 (14) Kidnapping.

14 (15) Assault with the intent to commit a specified felony, in
15 violation of Section 220.

16 (16) Continuous sexual abuse of a child, in violation of Section
17 288.5.

18 (17) Carjacking, as defined in subdivision (a) of Section 215.

19 (18) Rape, spousal rape, or sexual penetration, in concert, in
20 violation of Section 264.1.

21 (19) Extortion, as defined in Section 518, which would constitute
22 a felony violation of Section 186.22 of the Penal Code.

23 (20) Threats to victims or witnesses, as defined in Section 136.1,
24 which would constitute a felony violation of Section 186.22 of the
25 Penal Code.

26 (21) Any burglary of the first degree, as defined in subdivision
27 (a) of Section 460, wherein it is charged and proved that another
28 person, other than an accomplice, was present in the residence
29 during the commission of the burglary.

30 (22) Any violation of Section 12022.53.

31 (23) A violation of subdivision (b) or (c) of Section 11418. The
32 Legislature finds and declares that these specified crimes merit
33 special consideration when imposing a sentence to display society's
34 condemnation for these extraordinary crimes of violence against
35 the person.

36 (d) For the purposes of this section, the defendant shall be
37 deemed to remain in prison custody for an offense until the official
38 discharge from custody or until release on parole, whichever first
39 occurs, including any time during which the defendant remains
40 subject to reimprisonment for escape from custody or is

1 reimprisoned on revocation of parole. The additional penalties
2 provided for prior prison terms shall not be imposed unless they
3 are charged and admitted or found true in the action for the new
4 offense.

5 (e) The additional penalties provided for prior prison terms shall
6 not be imposed for any felony for which the defendant did not
7 serve a prior separate term in state prison or in county jail under
8 subdivision (h) of Section 1170.

9 (f) A prior conviction of a felony shall include a conviction in
10 another jurisdiction for an offense which, if committed in
11 California, is punishable by imprisonment in the state prison or in
12 county jail under subdivision (h) of Section 1170 if the defendant
13 served one year or more in prison for the offense in the other
14 jurisdiction. A prior conviction of a particular felony shall include
15 a conviction in another jurisdiction for an offense which includes
16 all of the elements of the particular felony as defined under
17 California law if the defendant served one year or more in prison
18 for the offense in the other jurisdiction.

19 (g) A prior separate prison term for the purposes of this section
20 shall mean a continuous completed period of prison incarceration
21 imposed for the particular offense alone or in combination with
22 concurrent or consecutive sentences for other crimes, including
23 any reimprisonment on revocation of parole which is not
24 accompanied by a new commitment to prison, and including any
25 reimprisonment after an escape from incarceration.

26 (h) Serving a prison term includes any confinement time in any
27 state prison or federal penal institution as punishment for
28 commission of an offense, including confinement in a hospital or
29 other institution or facility credited as service of prison time in the
30 jurisdiction of the confinement.

31 (i) For the purposes of this section, a commitment to the State
32 Department of Mental Health as a mentally disordered sex offender
33 following a conviction of a felony, which commitment exceeds
34 one year in duration, shall be deemed a prior prison term.

35 (j) For the purposes of this section, when a person subject to
36 the custody, control, and discipline of the Director of Corrections
37 is incarcerated at a facility operated by the Department of the Youth
38 Authority, that incarceration shall be deemed to be a term served
39 in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 11. Section 800 of the Penal Code, as amended by Section 24 of Chapter 39 of the Statutes of 2011, is amended to read:

800. Except as provided in Section 799, prosecution for an offense punishable by imprisonment in the state prison for eight years or more or by imprisonment pursuant to subdivision (h) of Section 1170 for eight years or more shall be commenced within six years after commission of the offense.

SEC. 12. Section 1170 of the Penal Code, as amended by Section 3 of Chapter 136 of the Statutes of 2011, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote

1 successful return to the community to an inmate with a short
2 remaining term of commitment and a release date that would allow
3 him or her adequate time to complete the program.

4 (3) In any case in which the punishment prescribed by statute
5 for a person convicted of a public offense is a term of imprisonment
6 in the state prison of any specification of three time periods, the
7 court shall sentence the defendant to one of the terms of
8 imprisonment specified unless the convicted person is given any
9 other disposition provided by law, including a fine, jail, probation,
10 or the suspension of imposition or execution of sentence or is
11 sentenced pursuant to subdivision (b) of Section 1168 because he
12 or she had committed his or her crime prior to July 1, 1977. In
13 sentencing the convicted person, the court shall apply the
14 sentencing rules of the Judicial Council. The court, unless it
15 determines that there are circumstances in mitigation of the
16 punishment prescribed, shall also impose any other term that it is
17 required by law to impose as an additional term. Nothing in this
18 article shall affect any provision of law that imposes the death
19 penalty, that authorizes or restricts the granting of probation or
20 suspending the execution or imposition of sentence, or expressly
21 provides for imprisonment in the state prison for life. In any case
22 in which the amount of preimprisonment credit under Section
23 2900.5 or any other provision of law is equal to or exceeds any
24 sentence imposed pursuant to this chapter, the entire sentence shall
25 be deemed to have been served and the defendant shall not be
26 actually delivered to the custody of the secretary. The court shall
27 advise the defendant that he or she shall serve a period of parole
28 and order the defendant to report to the parole office closest to the
29 defendant's last legal residence, unless the in-custody credits equal
30 the total sentence, including both confinement time and the period
31 of parole. The sentence shall be deemed a separate prior prison
32 term under Section 667.5, and a copy of the judgment and other
33 necessary documentation shall be forwarded to the secretary.

34 (b) When a judgment of imprisonment is to be imposed and the
35 statute specifies three possible terms, the choice of the appropriate
36 term shall rest within the sound discretion of the court. At least
37 four days prior to the time set for imposition of judgment, either
38 party or the victim, or the family of the victim if the victim is
39 deceased, may submit a statement in aggravation or mitigation. In
40 determining the appropriate term, the court may consider the record

1 in the case, the probation officer's report, other reports, including
2 reports received pursuant to Section 1203.03, and statements in
3 aggravation or mitigation submitted by the prosecution, the
4 defendant, or the victim, or the family of the victim if the victim
5 is deceased, and any further evidence introduced at the sentencing
6 hearing. The court shall select the term which, in the court's
7 discretion, best serves the interests of justice. The court shall set
8 forth on the record the reasons for imposing the term selected and
9 the court may not impose an upper term by using the fact of any
10 enhancement upon which sentence is imposed under any provision
11 of law. A term of imprisonment shall not be specified if imposition
12 of sentence is suspended.

13 (c) The court shall state the reasons for its sentence choice on
14 the record at the time of sentencing. The court shall also inform
15 the defendant that as part of the sentence after expiration of the
16 term he or she may be on parole for a period as provided in Section
17 3000.

18 (d) When a defendant subject to this section or subdivision (b)
19 of Section 1168 has been sentenced to be imprisoned in the state
20 prison and has been committed to the custody of the secretary, the
21 court may, within 120 days of the date of commitment on its own
22 motion, or at any time upon the recommendation of the secretary
23 or the Board of Parole Hearings, recall the sentence and
24 commitment previously ordered and resentence the defendant in
25 the same manner as if he or she had not previously been sentenced,
26 provided the new sentence, if any, is no greater than the initial
27 sentence. The resentence under this subdivision shall apply the
28 sentencing rules of the Judicial Council so as to eliminate disparity
29 of sentences and to promote uniformity of sentencing. Credit shall
30 be given for time served.

31 (e) (1) Notwithstanding any other law and consistent with
32 paragraph (1) of subdivision (a), if the secretary or the Board of
33 Parole Hearings or both determine that a prisoner satisfies the
34 criteria set forth in paragraph (2), the secretary or the board may
35 recommend to the court that the prisoner's sentence be recalled.

36 (2) The court shall have the discretion to resentence or recall if
37 the court finds that the facts described in subparagraphs (A) and
38 (B) or subparagraphs (B) and (C) exist:

39 (A) The prisoner is terminally ill with an incurable condition
40 caused by an illness or disease that would produce death within

1 six months, as determined by a physician employed by the
2 department.

3 (B) The conditions under which the prisoner would be released
4 or receive treatment do not pose a threat to public safety.

5 (C) The prisoner is permanently medically incapacitated with
6 a medical condition that renders him or her permanently unable
7 to perform activities of basic daily living, and results in the prisoner
8 requiring 24-hour total care, including, but not limited to, coma,
9 persistent vegetative state, brain death, ventilator-dependency, loss
10 of control of muscular or neurological function, and that
11 incapacitation did not exist at the time of the original sentencing.

12 The Board of Parole Hearings shall make findings pursuant to
13 this subdivision before making a recommendation for resentencing
14 or recall to the court. This subdivision does not apply to a prisoner
15 sentenced to death or a term of life without the possibility of parole.

16 (3) Within 10 days of receipt of a positive recommendation by
17 the secretary or the board, the court shall hold a hearing to consider
18 whether the prisoner's sentence should be recalled.

19 (4) Any physician employed by the department who determines
20 that a prisoner has six months or less to live shall notify the chief
21 medical officer of the prognosis. If the chief medical officer
22 concurs with the prognosis, he or she shall notify the warden.
23 Within 48 hours of receiving notification, the warden or the
24 warden's representative shall notify the prisoner of the recall and
25 resentencing procedures, and shall arrange for the prisoner to
26 designate a family member or other outside agent to be notified
27 as to the prisoner's medical condition and prognosis, and as to the
28 recall and resentencing procedures. If the inmate is deemed
29 mentally unfit, the warden or the warden's representative shall
30 contact the inmate's emergency contact and provide the information
31 described in paragraph (2).

32 (5) The warden or the warden's representative shall provide the
33 prisoner and his or her family member, agent, or emergency
34 contact, as described in paragraph (4), updated information
35 throughout the recall and resentencing process with regard to the
36 prisoner's medical condition and the status of the prisoner's recall
37 and resentencing proceedings.

38 (6) Notwithstanding any other provisions of this section, the
39 prisoner or his or her family member or designee may
40 independently request consideration for recall and resentencing

1 by contacting the chief medical officer at the prison or the
2 secretary. Upon receipt of the request, the chief medical officer
3 and the warden or the warden's representative shall follow the
4 procedures described in paragraph (4). If the secretary determines
5 that the prisoner satisfies the criteria set forth in paragraph (2), the
6 secretary or board may recommend to the court that the prisoner's
7 sentence be recalled. The secretary shall submit a recommendation
8 for release within 30 days in the case of inmates sentenced to
9 determinate terms and, in the case of inmates sentenced to
10 indeterminate terms, the secretary shall make a recommendation
11 to the Board of Parole Hearings with respect to the inmates who
12 have applied under this section. The board shall consider this
13 information and make an independent judgment pursuant to
14 paragraph (2) and make findings related thereto before rejecting
15 the request or making a recommendation to the court. This action
16 shall be taken at the next lawfully noticed board meeting.

17 (7) Any recommendation for recall submitted to the court by
18 the secretary or the Board of Parole Hearings shall include one or
19 more medical evaluations, a postrelease plan, and findings pursuant
20 to paragraph (2).

21 (8) If possible, the matter shall be heard before the same judge
22 of the court who sentenced the prisoner.

23 (9) If the court grants the recall and resentencing application,
24 the prisoner shall be released by the department within 48 hours
25 of receipt of the court's order, unless a longer time period is agreed
26 to by the inmate. At the time of release, the warden or the warden's
27 representative shall ensure that the prisoner has each of the
28 following in his or her possession: a discharge medical summary,
29 full medical records, state identification, parole medications, and
30 all property belonging to the prisoner. After discharge, any
31 additional records shall be sent to the prisoner's forwarding
32 address.

33 (10) The secretary shall issue a directive to medical and
34 correctional staff employed by the department that details the
35 guidelines and procedures for initiating a recall and resentencing
36 procedure. The directive shall clearly state that any prisoner who
37 is given a prognosis of six months or less to live is eligible for
38 recall and resentencing consideration, and that recall and
39 resentencing procedures shall be initiated upon that prognosis.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) ~~has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D)~~ is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or ~~(E)~~ (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

1 (4) Nothing in this subdivision shall be construed to prevent
2 other dispositions authorized by law, including pretrial diversion,
3 deferred entry of judgment, or an order granting probation pursuant
4 to Section 1203.1.

5 (5) The court, when imposing a sentence pursuant to paragraph
6 (1) or (2) of this subdivision, may commit the defendant to county
7 jail as follows:

8 (A) For a full term in custody as determined in accordance with
9 the applicable sentencing law.

10 (B) For a term as determined in accordance with the applicable
11 sentencing law, but suspend execution of a concluding portion of
12 the term selected in the court's discretion, during which time the
13 defendant shall be supervised by the county probation officer in
14 accordance with the terms, conditions, and procedures generally
15 applicable to persons placed on probation, for the remaining
16 unserved portion of the sentence imposed by the court. The period
17 of supervision shall be mandatory, and may not be earlier
18 terminated except by court order. During the period when the
19 defendant is under such supervision, unless in actual custody
20 related to the sentence imposed by the court, the defendant shall
21 be entitled to only actual time credit against the term of
22 imprisonment imposed by the court.

23 (6) The sentencing changes made by the act that added this
24 subdivision shall be applied prospectively to any person sentenced
25 on or after October 1, 2011.

26 (i) This section shall remain in effect only until January 1, 2012,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before that date, deletes or extends that date.

29 SEC. 12.1. Section 1170 of the Penal Code, as amended by
30 Section 3 of Chapter 136 of the Statutes of 2011, is amended to
31 read:

32 1170. (a) (1) The Legislature finds and declares that the
33 purpose of imprisonment for crime is punishment. This purpose
34 is best served by terms proportionate to the seriousness of the
35 offense with provision for uniformity in the sentences of offenders
36 committing the same offense under similar circumstances. The
37 Legislature further finds and declares that the elimination of
38 disparity and the provision of uniformity of sentences can best be
39 achieved by determinate sentences fixed by statute in proportion

1 to the seriousness of the offense as determined by the Legislature
2 to be imposed by the court with specified discretion.

3 (2) Notwithstanding paragraph (1), the Legislature further finds
4 and declares that programs should be available for inmates,
5 including, but not limited to, educational programs, that are
6 designed to prepare nonviolent felony offenders for successful
7 reentry into the community. The Legislature encourages the
8 development of policies and programs designed to educate and
9 rehabilitate nonviolent felony offenders. In implementing this
10 section, the Department of Corrections and Rehabilitation is
11 encouraged to give priority enrollment in programs to promote
12 successful return to the community to an inmate with a short
13 remaining term of commitment and a release date that would allow
14 him or her adequate time to complete the program.

15 (3) In any case in which the punishment prescribed by statute
16 for a person convicted of a public offense is a term of imprisonment
17 in the state prison of any specification of three time periods, the
18 court shall sentence the defendant to one of the terms of
19 imprisonment specified unless the convicted person is given any
20 other disposition provided by law, including a fine, jail, probation,
21 or the suspension of imposition or execution of sentence or is
22 sentenced pursuant to subdivision (b) of Section 1168 because he
23 or she had committed his or her crime prior to July 1, 1977. In
24 sentencing the convicted person, the court shall apply the
25 sentencing rules of the Judicial Council. The court, unless it
26 determines that there are circumstances in mitigation of the
27 punishment prescribed, shall also impose any other term that it is
28 required by law to impose as an additional term. Nothing in this
29 article shall affect any provision of law that imposes the death
30 penalty, that authorizes or restricts the granting of probation or
31 suspending the execution or imposition of sentence, or expressly
32 provides for imprisonment in the state prison for life, except as
33 provided in paragraph (2) of subdivision (d). In any case in which
34 the amount of preimprisonment credit under Section 2900.5 or any
35 other provision of law is equal to or exceeds any sentence imposed
36 pursuant to this chapter, the entire sentence shall be deemed to
37 have been served and the defendant shall not be actually delivered
38 to the custody of the secretary. The court shall advise the defendant
39 that he or she shall serve a period of parole and order the defendant
40 to report to the parole office closest to the defendant's last legal

1 residence, unless the in-custody credits equal the total sentence,
2 including both confinement time and the period of parole. The
3 sentence shall be deemed a separate prior prison term under Section
4 667.5, and a copy of the judgment and other necessary
5 documentation shall be forwarded to the secretary.

6 (b) When a judgment of imprisonment is to be imposed and the
7 statute specifies three possible terms, the choice of the appropriate
8 term shall rest within the sound discretion of the court. At least
9 four days prior to the time set for imposition of judgment, either
10 party or the victim, or the family of the victim if the victim is
11 deceased, may submit a statement in aggravation or mitigation. In
12 determining the appropriate term, the court may consider the record
13 in the case, the probation officer's report, other reports, including
14 reports received pursuant to Section 1203.03, and statements in
15 aggravation or mitigation submitted by the prosecution, the
16 defendant, or the victim, or the family of the victim if the victim
17 is deceased, and any further evidence introduced at the sentencing
18 hearing. The court shall select the term which, in the court's
19 discretion, best serves the interests of justice. The court shall set
20 forth on the record the reasons for imposing the term selected and
21 the court may not impose an upper term by using the fact of any
22 enhancement upon which sentence is imposed under any provision
23 of law. A term of imprisonment shall not be specified if imposition
24 of sentence is suspended.

25 (c) The court shall state the reasons for its sentence choice on
26 the record at the time of sentencing. The court shall also inform
27 the defendant that as part of the sentence after expiration of the
28 term he or she may be on parole for a period as provided in Section
29 3000.

30 (d) (1) When a defendant subject to this section or subdivision
31 (b) of Section 1168 has been sentenced to be imprisoned in the
32 state prison and has been committed to the custody of the secretary,
33 the court may, within 120 days of the date of commitment on its
34 own motion, or at any time upon the recommendation of the
35 secretary or the Board of Parole Hearings, recall the sentence and
36 commitment previously ordered and resentence the defendant in
37 the same manner as if he or she had not previously been sentenced,
38 provided the new sentence, if any, is no greater than the initial
39 sentence. The court resentencing under this subdivision shall apply
40 the sentencing rules of the Judicial Council so as to eliminate

1 disparity of sentences and to promote uniformity of sentencing.
2 Credit shall be given for time served.

3 (2) (A) (i) When a defendant who was under 18 years of age
4 at the time of the commission of the offense for which the
5 defendant was sentenced to imprisonment for life without the
6 possibility of parole has served at least 15 years of that sentence,
7 the defendant may submit to the sentencing court a petition for
8 recall and resentencing.

9 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
10 *to defendants sentenced to life without parole for an offense where*
11 *the defendant tortured, as described in Section 206, his or her*
12 *victim or the victim was a public safety official, including any law*
13 *enforcement personnel mentioned in Chapter 4.5 (commencing*
14 *with Section 830) of Title 3, or any firefighter as described in*
15 *Section 245.1, as well as any other officer in any segment of law*
16 *enforcement who is employed by the federal government, the state,*
17 *or any of its political subdivisions.*

18 (B) The defendant shall file the original petition with the
19 sentencing court. A copy of the petition shall be served on the
20 agency that prosecuted the case. The petition shall include the
21 defendant's statement that he or she was under 18 years of age at
22 the time of the crime and was sentenced to life in prison without
23 the possibility of parole, the defendant's statement describing his
24 or her remorse and work towards rehabilitation, and the defendant's
25 statement that one of the following is true:

26 (i) The defendant was convicted pursuant to felony murder or
27 aiding and abetting murder provisions of law.

28 (ii) The defendant does not have juvenile felony adjudications
29 for assault or other felony crimes with a significant potential for
30 personal harm to victims prior to the offense for which the sentence
31 is being considered for recall.

32 (iii) The defendant committed the offense with at least one adult
33 codefendant.

34 (iv) The defendant has performed acts that tend to indicate
35 rehabilitation or the potential for rehabilitation, including, but not
36 limited to, availing himself or herself of rehabilitative, educational,
37 or vocational programs, if those programs have been available at
38 his or her classification level and facility, using self-study for
39 self-improvement, or showing evidence of remorse.

1 (C) If any of the information required in subparagraph (B) is
2 missing from the petition, or if proof of service on the prosecuting
3 agency is not provided, the court shall return the petition to the
4 defendant and advise the defendant that the matter cannot be
5 considered without the missing information.

6 (D) A reply to the petition, if any, shall be filed with the court
7 within 60 days of the date on which the prosecuting agency was
8 served with the petition, unless a continuance is granted for good
9 cause.

10 (E) If the court finds by a preponderance of the evidence that
11 the statements in the petition are true, the court shall hold a hearing
12 to consider whether to recall the sentence and commitment
13 previously ordered and to resentence the defendant in the same
14 manner as if the defendant had not previously been sentenced,
15 provided that the new sentence, if any, is not greater than the initial
16 sentence. Victims, or victim family members if the victim is
17 deceased, shall retain the rights to participate in the hearing.

18 (F) The factors that the court may consider when determining
19 whether to recall and resentence include, but are not limited to,
20 the following:

21 (i) The defendant was convicted pursuant to felony murder or
22 aiding and abetting murder provisions of law.

23 (ii) The defendant does not have juvenile felony adjudications
24 for assault or other felony crimes with a significant potential for
25 personal harm to victims prior to the offense for which the sentence
26 is being considered for recall.

27 (iii) The defendant committed the offense with at least one adult
28 codefendant.

29 (iv) Prior to the offense for which the sentence is being
30 considered for recall, the defendant had insufficient adult support
31 or supervision and had suffered from psychological or physical
32 trauma, or significant stress.

33 (v) The defendant suffers from cognitive limitations due to
34 mental illness, developmental disabilities, or other factors that did
35 not constitute a defense, but influenced the defendant's
36 involvement in the offense.

37 (vi) The defendant has performed acts that tend to indicate
38 rehabilitation or the potential for rehabilitation, including, but not
39 limited to, availing himself or herself of rehabilitative, educational,
40 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

3 (vii) The defendant has maintained family ties or connections
4 with others through letter writing, calls, or visits, or has eliminated
5 contact with individuals outside of prison who are currently
6 involved with crime.

7 (viii) The defendant has had no disciplinary actions for violent
8 activities in the last five years in which the defendant was
9 determined to be the aggressor.

10 (G) The court shall have the discretion to recall the sentence
11 and commitment previously ordered and to resentence the
12 defendant in the same manner as if the defendant had not
13 previously been sentenced, provided that the new sentence, if any,
14 is not greater than the initial sentence. The discretion of the court
15 shall be exercised in consideration of the criteria in subparagraph
16 (B). Victims, or victim family members if the victim is deceased,
17 shall be notified of the resentencing hearing and shall retain their
18 rights to participate in the hearing.

19 (H) If the sentence is not recalled, the defendant may submit
20 another petition for recall and resentencing to the sentencing court
21 when the defendant has been committed to the custody of the
22 department for at least 20 years. If recall and resentencing is not
23 granted under that petition, the defendant may file another petition
24 after having served 24 years. The final petition may be submitted,
25 and the response to that petition shall be determined, during the
26 25th year of the defendant's sentence.

27 (I) In addition to the criteria in subparagraph (F), the court may
28 consider any other criteria that the court deems relevant to its
29 decision, so long as the court identifies them on the record,
30 provides a statement of reasons for adopting them, and states why
31 the defendant does or does not satisfy the criteria.

32 (J) This subdivision shall have retroactive application.

33 (e) (1) Notwithstanding any other law and consistent with
34 paragraph (1) of subdivision (a), if the secretary or the Board of
35 Parole Hearings or both determine that a prisoner satisfies the
36 criteria set forth in paragraph (2), the secretary or the board may
37 recommend to the court that the prisoner's sentence be recalled.

38 (2) The court shall have the discretion to resentence or recall if
39 the court finds that the facts described in subparagraphs (A) and
40 (B) or subparagraphs (B) and (C) exist:

1 (A) The prisoner is terminally ill with an incurable condition
2 caused by an illness or disease that would produce death within
3 six months, as determined by a physician employed by the
4 department.

5 (B) The conditions under which the prisoner would be released
6 or receive treatment do not pose a threat to public safety.

7 (C) The prisoner is permanently medically incapacitated with
8 a medical condition that renders him or her permanently unable
9 to perform activities of basic daily living, and results in the prisoner
10 requiring 24-hour total care, including, but not limited to, coma,
11 persistent vegetative state, brain death, ventilator-dependency, loss
12 of control of muscular or neurological function, and that
13 incapacitation did not exist at the time of the original sentencing.

14 The Board of Parole Hearings shall make findings pursuant to
15 this subdivision before making a recommendation for resentence
16 or recall to the court. This subdivision does not apply to a prisoner
17 sentenced to death or a term of life without the possibility of parole.

18 (3) Within 10 days of receipt of a positive recommendation by
19 the secretary or the board, the court shall hold a hearing to consider
20 whether the prisoner's sentence should be recalled.

21 (4) Any physician employed by the department who determines
22 that a prisoner has six months or less to live shall notify the chief
23 medical officer of the prognosis. If the chief medical officer
24 concurs with the prognosis, he or she shall notify the warden.
25 Within 48 hours of receiving notification, the warden or the
26 warden's representative shall notify the prisoner of the recall and
27 resentencing procedures, and shall arrange for the prisoner to
28 designate a family member or other outside agent to be notified
29 as to the prisoner's medical condition and prognosis, and as to the
30 recall and resentencing procedures. If the inmate is deemed
31 mentally unfit, the warden or the warden's representative shall
32 contact the inmate's emergency contact and provide the information
33 described in paragraph (2).

34 (5) The warden or the warden's representative shall provide the
35 prisoner and his or her family member, agent, or emergency
36 contact, as described in paragraph (4), updated information
37 throughout the recall and resentencing process with regard to the
38 prisoner's medical condition and the status of the prisoner's recall
39 and resentencing proceedings.

(6) Notwithstanding any other provisions of this section, the prisoner or his or her family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary or board may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

(7) Any recommendation for recall submitted to the court by the secretary or the Board of Parole Hearings shall include one or more medical evaluations, a postrelease plan, and findings pursuant to paragraph (2).

(8) If possible, the matter shall be heard before the same judge of the court who sentenced the prisoner.

(9) If the court grants the recall and resentencing application, the prisoner shall be released by the department within 48 hours of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for

1 recall and resentencing consideration, and that recall and
2 resentencing procedures shall be initiated upon that prognosis.

3 (f) Notwithstanding any other provision of this section, for
4 purposes of paragraph (3) of subdivision (h), any allegation that
5 a defendant is eligible for state prison due to a prior or current
6 conviction, sentence enhancement, or because he or she is required
7 to register as a sex offender shall not be subject to dismissal
8 pursuant to Section 1385.

9 (g) A sentence to state prison for a determinate term for which
10 only one term is specified, is a sentence to state prison under this
11 section.

12 (h) (1) Except as provided in paragraph (3), a felony punishable
13 pursuant to this subdivision where the term is not specified in the
14 underlying offense shall be punishable by a term of imprisonment
15 in a county jail for 16 months, or two or three years.

16 (2) Except as provided in paragraph (3), a felony punishable
17 pursuant to this subdivision shall be punishable by imprisonment
18 in a county jail for the term described in the underlying offense.

19 (3) Notwithstanding paragraphs (1) and (2), where the defendant
20 (A) has a prior or current felony conviction for a serious felony
21 described in subdivision (c) of Section 1192.7 or a prior or current
22 conviction for a violent felony described in subdivision (c) of
23 Section 667.5, (B) has a prior felony conviction in another
24 jurisdiction for an offense that has all of the elements of a serious
25 felony described in subdivision (c) of Section 1192.7 or a violent
26 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
27 ~~prior juvenile adjudication where the defendant was 16 years of~~
28 ~~age or older at the time he or she committed the prior offense of~~
29 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
30 ~~a violent felony described in subdivision (c) of Section 667.5, a~~
31 ~~prior juvenile adjudication in another jurisdiction for an offense~~
32 ~~that has all the elements of a serious felony described in subdivision~~
33 ~~(c) of Section 1192.7 or a violent felony described in subdivision~~
34 ~~(c) of Section 667.5, or a felony described in subdivision (b) of~~
35 ~~Section 707 of the Welfare and Institutions Code, (D) is required~~
36 ~~to register as a sex offender pursuant to Chapter 5.5 (commencing~~
37 ~~with Section 290) of Title 9 of Part 1, or (E) (D) is convicted of a~~
38 ~~crime and as part of the sentence an enhancement pursuant to~~
39 ~~Section 186.11 is imposed, an executed sentence for a felony~~

1 punishable pursuant to this subdivision shall be served in state
2 prison.

3 (4) Nothing in this subdivision shall be construed to prevent
4 other dispositions authorized by law, including pretrial diversion,
5 deferred entry of judgment, or an order granting probation pursuant
6 to Section 1203.1.

7 (5) The court, when imposing a sentence pursuant to paragraphs
8 (1) or (2) of this subdivision, may commit the defendant to county
9 jail as follows:

10 (A) For a full term in custody as determined in accordance with
11 the applicable sentencing law.

12 (B) For a term as determined in accordance with the applicable
13 sentencing law, but suspend execution of a concluding portion of
14 the term selected in the court's discretion, during which time the
15 defendant shall be supervised by the county probation officer in
16 accordance with the terms, conditions, and procedures generally
17 applicable to persons placed on probation, for the remaining
18 unserved portion of the sentence imposed by the court. The period
19 of supervisions shall be mandatory, and may not be earlier
20 terminated except by court order. During the period when the
21 defendant is under such supervision, unless in actual custody
22 related to the sentence imposed by the court, the defendant shall
23 be entitled to only actual time credit against the term of
24 imprisonment imposed by the court.

25 (6) The sentencing changes made by the act that added this
26 subdivision shall be applied prospectively to any person sentenced
27 on or after October 1, 2011.

28 (i) This section shall remain in effect only until January 1, 2012,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before that date, deletes or extends that date.

31 SEC. 12.2. Section 1170 of the Penal Code, as amended by
32 Section 3 of Chapter 136 of the Statutes of 2011, is amended to
33 read:

34 1170. (a) (1) The Legislature finds and declares that the
35 purpose of imprisonment for crime is punishment. This purpose
36 is best served by terms proportionate to the seriousness of the
37 offense with provision for uniformity in the sentences of offenders
38 committing the same offense under similar circumstances. The
39 Legislature further finds and declares that the elimination of
40 disparity and the provision of uniformity of sentences can best be

1 achieved by determinate sentences fixed by statute in proportion
2 to the seriousness of the offense as determined by the Legislature
3 to be imposed by the court with specified discretion.

4 (2) Notwithstanding paragraph (1), the Legislature further finds
5 and declares that programs should be available for inmates,
6 including, but not limited to, educational programs, that are
7 designed to prepare nonviolent felony offenders for successful
8 reentry into the community. The Legislature encourages the
9 development of policies and programs designed to educate and
10 rehabilitate nonviolent felony offenders. In implementing this
11 section, the Department of Corrections and Rehabilitation is
12 encouraged to give priority enrollment in programs to promote
13 successful return to the community to an inmate with a short
14 remaining term of commitment and a release date that would allow
15 him or her adequate time to complete the program.

16 (3) In any case in which the punishment prescribed by statute
17 for a person convicted of a public offense is a term of imprisonment
18 in the state prison of any specification of three time periods, the
19 court shall sentence the defendant to one of the terms of
20 imprisonment specified unless the convicted person is given any
21 other disposition provided by law, including a fine, jail, probation,
22 or the suspension of imposition or execution of sentence or is
23 sentenced pursuant to subdivision (b) of Section 1168 because he
24 or she had committed his or her crime prior to July 1, 1977. In
25 sentencing the convicted person, the court shall apply the
26 sentencing rules of the Judicial Council. The court, unless it
27 determines that there are circumstances in mitigation of the
28 punishment prescribed, shall also impose any other term that it is
29 required by law to impose as an additional term. Nothing in this
30 article shall affect any provision of law that imposes the death
31 penalty, that authorizes or restricts the granting of probation or
32 suspending the execution or imposition of sentence, or expressly
33 provides for imprisonment in the state prison for life. In any case
34 in which the amount of preimprisonment credit under Section
35 2900.5 or any other provision of law is equal to or exceeds any
36 sentence imposed pursuant to this chapter, the entire sentence shall
37 be deemed to have been served and the defendant shall not be
38 actually delivered to the custody of the secretary. The court shall
39 advise the defendant that he or she shall serve a period of parole
40 and order the defendant to report to the parole office closest to the

1 defendant's last legal residence, unless the in-custody credits equal
2 the total sentence, including both confinement time and the period
3 of parole. The sentence shall be deemed a separate prior prison
4 term under Section 667.5, and a copy of the judgment and other
5 necessary documentation shall be forwarded to the secretary.

6 (b) When a judgment of imprisonment is to be imposed and the
7 statute specifies three possible terms, the choice of the appropriate
8 term shall rest within the sound discretion of the court. At least
9 four days prior to the time set for imposition of judgment, either
10 party or the victim, or the family of the victim if the victim is
11 deceased, may submit a statement in aggravation or mitigation. In
12 determining the appropriate term, the court may consider the record
13 in the case, the probation officer's report, other reports, including
14 reports received pursuant to Section 1203.03, and statements in
15 aggravation or mitigation submitted by the prosecution, the
16 defendant, or the victim, or the family of the victim if the victim
17 is deceased, and any further evidence introduced at the sentencing
18 hearing. The court shall select the term which, in the court's
19 discretion, best serves the interests of justice. The court shall set
20 forth on the record the reasons for imposing the term selected and
21 the court may not impose an upper term by using the fact of any
22 enhancement upon which sentence is imposed under any provision
23 of law. A term of imprisonment shall not be specified if imposition
24 of sentence is suspended.

25 (c) The court shall state the reasons for its sentence choice on
26 the record at the time of sentencing. The court shall also inform
27 the defendant that as part of the sentence after expiration of the
28 term he or she may be on parole for a period as provided in Section
29 3000.

30 (d) When a defendant subject to this section or subdivision (b)
31 of Section 1168 has been sentenced to be imprisoned in the state
32 prison and has been committed to the custody of the secretary, the
33 court may, within 120 days of the date of commitment on its own
34 motion, or at any time upon the recommendation of the secretary
35 or the Board of Parole Hearings, recall the sentence and
36 commitment previously ordered and resentence the defendant in
37 the same manner as if he or she had not previously been sentenced,
38 provided the new sentence, if any, is no greater than the initial
39 sentence. The resentence under this subdivision shall apply the
40 sentencing rules of the Judicial Council so as to eliminate disparity

1 of sentences and to promote uniformity of sentencing. Credit shall
2 be given for time served.

3 (e) (1) Notwithstanding any other law and consistent with
4 paragraph (1) of subdivision (a), if the secretary or the Board of
5 Parole Hearings or both determine that a prisoner satisfies the
6 criteria set forth in paragraph (2), the secretary or the board may
7 recommend to the court that the prisoner's sentence be recalled.

8 (2) The court shall have the discretion to resentence or recall if
9 the court finds that the facts described in subparagraphs (A) and
10 (B) or subparagraphs (B) and (C) exist:

11 (A) The prisoner is terminally ill with an incurable condition
12 caused by an illness or disease that would produce death within
13 six months, as determined by a physician employed by the
14 department.

15 (B) The conditions under which the prisoner would be released
16 or receive treatment do not pose a threat to public safety.

17 (C) The prisoner is permanently medically incapacitated with
18 a medical condition that renders him or her permanently unable
19 to perform activities of basic daily living, and results in the prisoner
20 requiring 24-hour total care, including, but not limited to, coma,
21 persistent vegetative state, brain death, ventilator-dependency, loss
22 of control of muscular or neurological function, and that
23 incapacitation did not exist at the time of the original sentencing.

24 The Board of Parole Hearings shall make findings pursuant to
25 this subdivision before making a recommendation for resentence
26 or recall to the court. This subdivision does not apply to a prisoner
27 sentenced to death or a term of life without the possibility of parole.

28 (3) Within 10 days of receipt of a positive recommendation by
29 the secretary or the board, the court shall hold a hearing to consider
30 whether the prisoner's sentence should be recalled.

31 (4) Any physician employed by the department who determines
32 that a prisoner has six months or less to live shall notify the chief
33 medical officer of the prognosis. If the chief medical officer
34 concurs with the prognosis, he or she shall notify the warden.
35 Within 48 hours of receiving notification, the warden or the
36 warden's representative shall notify the prisoner of the recall and
37 resentencing procedures, and shall arrange for the prisoner to
38 designate a family member or other outside agent to be notified
39 as to the prisoner's medical condition and prognosis, and as to the
40 recall and resentencing procedures. If the inmate is deemed

1 mentally unfit, the warden or the warden's representative shall
2 contact the inmate's emergency contact and provide the information
3 described in paragraph (2).

4 (5) The warden or the warden's representative shall provide the
5 prisoner and his or her family member, agent, or emergency
6 contact, as described in paragraph (4), updated information
7 throughout the recall and resentencing process with regard to the
8 prisoner's medical condition and the status of the prisoner's recall
9 and resentencing proceedings.

10 (6) Notwithstanding any other provisions of this section, the
11 prisoner or his or her family member or designee may
12 independently request consideration for recall and resentencing
13 by contacting the chief medical officer at the prison or the
14 secretary. Upon receipt of the request, the chief medical officer
15 and the warden or the warden's representative shall follow the
16 procedures described in paragraph (4). If the secretary determines
17 that the prisoner satisfies the criteria set forth in paragraph (2), the
18 secretary or board may recommend to the court that the prisoner's
19 sentence be recalled. The secretary shall submit a recommendation
20 for release within 30 days in the case of inmates sentenced to
21 determinate terms and, in the case of inmates sentenced to
22 indeterminate terms, the secretary shall make a recommendation
23 to the Board of Parole Hearings with respect to the inmates who
24 have applied under this section. The board shall consider this
25 information and make an independent judgment pursuant to
26 paragraph (2) and make findings related thereto before rejecting
27 the request or making a recommendation to the court. This action
28 shall be taken at the next lawfully noticed board meeting.

29 (7) Any recommendation for recall submitted to the court by
30 the secretary or the Board of Parole Hearings shall include one or
31 more medical evaluations, a postrelease plan, and findings pursuant
32 to paragraph (2).

33 (8) If possible, the matter shall be heard before the same judge
34 of the court who sentenced the prisoner.

35 (9) If the court grants the recall and resentencing application,
36 the prisoner shall be released by the department within 48 hours
37 of receipt of the court's order, unless a longer time period is agreed
38 to by the inmate. At the time of release, the warden or the warden's
39 representative shall ensure that the prisoner has each of the
40 following in his or her possession: a discharge medical summary,

1 full medical records, state identification, parole medications, and
2 all property belonging to the prisoner. After discharge, any
3 additional records shall be sent to the prisoner's forwarding
4 address.

5 (10) The secretary shall issue a directive to medical and
6 correctional staff employed by the department that details the
7 guidelines and procedures for initiating a recall and resentencing
8 procedure. The directive shall clearly state that any prisoner who
9 is given a prognosis of six months or less to live is eligible for
10 recall and resentencing consideration, and that recall and
11 resentencing procedures shall be initiated upon that prognosis.

12 (f) Notwithstanding any other provision of this section, for
13 purposes of paragraph (3) of subdivision (h), any allegation that
14 a defendant is eligible for state prison due to a prior or current
15 conviction, sentence enhancement, or because he or she is required
16 to register as a sex offender shall not be subject to dismissal
17 pursuant to Section 1385.

18 (g) A sentence to state prison for a determinate term for which
19 only one term is specified, is a sentence to state prison under this
20 section.

21 (h) (1) Except as provided in paragraph (3), a felony punishable
22 pursuant to this subdivision where the term is not specified in the
23 underlying offense shall be punishable by a term of imprisonment
24 in a county jail for 16 months, or two or three years.

25 (2) Except as provided in paragraph (3), a felony punishable
26 pursuant to this subdivision shall be punishable by imprisonment
27 in a county jail for the term described in the underlying offense.

28 (3) Notwithstanding paragraphs (1) and (2), where the defendant
29 (A) has a prior or current felony conviction for a serious felony
30 described in subdivision (c) of Section 1192.7 or a prior or current
31 conviction for a violent felony described in subdivision (c) of
32 Section 667.5, (B) has a prior felony conviction in another
33 jurisdiction for an offense that has all of the elements of a serious
34 felony described in subdivision (c) of Section 1192.7 or a violent
35 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
36 ~~prior juvenile adjudication where the defendant was 16 years of~~
37 ~~age or older at the time he or she committed the prior offense of~~
38 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
39 ~~a violent felony described in subdivision (c) of Section 667.5, a~~
40 ~~prior juvenile adjudication in another jurisdiction for an offense~~

1 that has all the elements of a serious felony described in subdivision
2 (e) of Section 1192.7 or a violent felony described in subdivision
3 (e) of Section 667.5, or a felony described in subdivision (b) of
4 Section 707 of the Welfare and Institutions Code, ~~(D)~~ is required
5 to register as a sex offender pursuant to Chapter 5.5 (commencing
6 with Section 290) of Title 9 of Part 1, or ~~(E)~~ (D) is convicted of a
7 crime and as part of the sentence an enhancement pursuant to
8 Section 186.11 is imposed, an executed sentence for a felony
9 punishable pursuant to this subdivision shall be served in state
10 prison.

11 (4) Nothing in this subdivision shall be construed to prevent
12 other dispositions authorized by law, including pretrial diversion,
13 deferred entry of judgment, or an order granting probation pursuant
14 to Section 1203.1.

15 (5) The court, when imposing a sentence pursuant to paragraphs
16 (1) or (2) of this subdivision, may commit the defendant to county
17 jail as follows:

18 (A) For a full term in custody as determined in accordance with
19 the applicable sentencing law.

20 (B) For a term as determined in accordance with the applicable
21 sentencing law, but suspend execution of a concluding portion of
22 the term selected in the court's discretion, during which time the
23 defendant shall be supervised by the county probation officer in
24 accordance with the terms, conditions, and procedures generally
25 applicable to persons placed on probation, for the remaining
26 unserved portion of the sentence imposed by the court. The period
27 of supervision shall be mandatory, and may not be earlier
28 terminated except by court order. During the period when the
29 defendant is under such supervision, unless in actual custody
30 related to the sentence imposed by the court, the defendant shall
31 be entitled to only actual time credit against the term of
32 imprisonment imposed by the court.

33 (6) The sentencing changes made by the act that added this
34 subdivision shall be applied prospectively to any person sentenced
35 on or after October 1, 2011.

36 (i) This section shall remain in effect only until January 1, 2014,
37 and as of that date is repealed, unless a later enacted statute, that
38 is enacted before that date, deletes or extends that date.

1 SEC. 12.3. Section 1170 of the Penal Code, as amended by
2 Section 3 of Chapter 136 of the Statutes of 2011, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison of any specification of three time periods, the
29 court shall sentence the defendant to one of the terms of
30 imprisonment specified unless the convicted person is given any
31 other disposition provided by law, including a fine, jail, probation,
32 or the suspension of imposition or execution of sentence or is
33 sentenced pursuant to subdivision (b) of Section 1168 because he
34 or she had committed his or her crime prior to July 1, 1977. In
35 sentencing the convicted person, the court shall apply the
36 sentencing rules of the Judicial Council. The court, unless it
37 determines that there are circumstances in mitigation of the
38 punishment prescribed, shall also impose any other term that it is
39 required by law to impose as an additional term. Nothing in this
40 article shall affect any provision of law that imposes the death

1 penalty, that authorizes or restricts the granting of probation or
2 suspending the execution or imposition of sentence, or expressly
3 provides for imprisonment in the state prison for life, except as
4 provided in paragraph (2) of subdivision (d). In any case in which
5 the amount of preimprisonment credit under Section 2900.5 or any
6 other provision of law is equal to or exceeds any sentence imposed
7 pursuant to this chapter, the entire sentence shall be deemed to
8 have been served and the defendant shall not be actually delivered
9 to the custody of the secretary. The court shall advise the defendant
10 that he or she shall serve a period of parole and order the defendant
11 to report to the parole office closest to the defendant's last legal
12 residence, unless the in-custody credits equal the total sentence,
13 including both confinement time and the period of parole. The
14 sentence shall be deemed a separate prior prison term under Section
15 667.5, and a copy of the judgment and other necessary
16 documentation shall be forwarded to the secretary.

17 (b) When a judgment of imprisonment is to be imposed and the
18 statute specifies three possible terms, the choice of the appropriate
19 term shall rest within the sound discretion of the court. At least
20 four days prior to the time set for imposition of judgment, either
21 party or the victim, or the family of the victim if the victim is
22 deceased, may submit a statement in aggravation or mitigation. In
23 determining the appropriate term, the court may consider the record
24 in the case, the probation officer's report, other reports, including
25 reports received pursuant to Section 1203.03, and statements in
26 aggravation or mitigation submitted by the prosecution, the
27 defendant, or the victim, or the family of the victim if the victim
28 is deceased, and any further evidence introduced at the sentencing
29 hearing. The court shall select the term which, in the court's
30 discretion, best serves the interests of justice. The court shall set
31 forth on the record the reasons for imposing the term selected and
32 the court may not impose an upper term by using the fact of any
33 enhancement upon which sentence is imposed under any provision
34 of law. A term of imprisonment shall not be specified if imposition
35 of sentence is suspended.

36 (c) The court shall state the reasons for its sentence choice on
37 the record at the time of sentencing. The court shall also inform
38 the defendant that as part of the sentence after expiration of the
39 term he or she may be on parole for a period as provided in Section
40 3000.

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(2) (A) (i) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 15 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing.

(ii) *Notwithstanding clause (i), paragraph (2) shall not apply to defendants sentenced to life without parole for an offense where the defendant tortured, as described in Section 206, his or her victim or the victim was a public safety official, including any law enforcement personnel mentioned in Chapter 4.5 (commencing with Section 830) of Title 3, or any firefighter as described in Section 245.1, as well as any other officer in any segment of law enforcement who is employed by the federal government, the state, or any of its political subdivisions.*

(B) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that he or she was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing his or her remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

(i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for

1 personal harm to victims prior to the offense for which the sentence
2 is being considered for recall.

3 (iii) The defendant committed the offense with at least one adult
4 codefendant.

5 (iv) The defendant has performed acts that tend to indicate
6 rehabilitation or the potential for rehabilitation, including, but not
7 limited to, availing himself or herself of rehabilitative, educational,
8 or vocational programs, if those programs have been available at
9 his or her classification level and facility, using self-study for
10 self-improvement, or showing evidence of remorse.

11 (C) If any of the information required in subparagraph (B) is
12 missing from the petition, or if proof of service on the prosecuting
13 agency is not provided, the court shall return the petition to the
14 defendant and advise the defendant that the matter cannot be
15 considered without the missing information.

16 (D) A reply to the petition, if any, shall be filed with the court
17 within 60 days of the date on which the prosecuting agency was
18 served with the petition, unless a continuance is granted for good
19 cause.

20 (E) If the court finds by a preponderance of the evidence that
21 the statements in the petition are true, the court shall hold a hearing
22 to consider whether to recall the sentence and commitment
23 previously ordered and to resentence the defendant in the same
24 manner as if the defendant had not previously been sentenced,
25 provided that the new sentence, if any, is not greater than the initial
26 sentence. Victims, or victim family members if the victim is
27 deceased, shall retain the rights to participate in the hearing.

28 (F) The factors that the court may consider when determining
29 whether to recall and resentence include, but are not limited to,
30 the following:

31 (i) The defendant was convicted pursuant to felony murder or
32 aiding and abetting murder provisions of law.

33 (ii) The defendant does not have juvenile felony adjudications
34 for assault or other felony crimes with a significant potential for
35 personal harm to victims prior to the offense for which the sentence
36 is being considered for recall.

37 (iii) The defendant committed the offense with at least one adult
38 codefendant.

39 (iv) Prior to the offense for which the sentence is being
40 considered for recall, the defendant had insufficient adult support

1 or supervision and had suffered from psychological or physical
2 trauma, or significant stress.

3 (v) The defendant suffers from cognitive limitations due to
4 mental illness, developmental disabilities, or other factors that did
5 not constitute a defense, but influenced the defendant's
6 involvement in the offense.

7 (vi) The defendant has performed acts that tend to indicate
8 rehabilitation or the potential for rehabilitation, including, but not
9 limited to, availing himself or herself of rehabilitative, educational,
10 or vocational programs, if those programs have been available at
11 his or her classification level and facility, using self-study for
12 self-improvement, or showing evidence of remorse.

13 (vii) The defendant has maintained family ties or connections
14 with others through letter writing, calls, or visits, or has eliminated
15 contact with individuals outside of prison who are currently
16 involved with crime.

17 (viii) The defendant has had no disciplinary actions for violent
18 activities in the last five years in which the defendant was
19 determined to be the aggressor.

20 (G) The court shall have the discretion to recall the sentence
21 and commitment previously ordered and to resentence the
22 defendant in the same manner as if the defendant had not
23 previously been sentenced, provided that the new sentence, if any,
24 is not greater than the initial sentence. The discretion of the court
25 shall be exercised in consideration of the criteria in subparagraph
26 (B). Victims, or victim family members if the victim is deceased,
27 shall be notified of the resentencing hearing and shall retain their
28 rights to participate in the hearing.

29 (H) If the sentence is not recalled, the defendant may submit
30 another petition for recall and resentencing to the sentencing court
31 when the defendant has been committed to the custody of the
32 department for at least 20 years. If recall and resentencing is not
33 granted under that petition, the defendant may file another petition
34 after having served 24 years. The final petition may be submitted,
35 and the response to that petition shall be determined, during the
36 25th year of the defendant's sentence.

37 (I) In addition to the criteria in subparagraph (F), the court may
38 consider any other criteria that the court deems relevant to its
39 decision, so long as the court identifies them on the record,

1 provides a statement of reasons for adopting them, and states why
2 the defendant does or does not satisfy the criteria.

3 (J) This subdivision shall have retroactive application.

4 (e) (1) Notwithstanding any other law and consistent with
5 paragraph (1) of subdivision (a), if the secretary or the Board of
6 Parole Hearings or both determine that a prisoner satisfies the
7 criteria set forth in paragraph (2), the secretary or the board may
8 recommend to the court that the prisoner's sentence be recalled.

9 (2) The court shall have the discretion to resentence or recall if
10 the court finds that the facts described in subparagraphs (A) and
11 (B) or subparagraphs (B) and (C) exist:

12 (A) The prisoner is terminally ill with an incurable condition
13 caused by an illness or disease that would produce death within
14 six months, as determined by a physician employed by the
15 department.

16 (B) The conditions under which the prisoner would be released
17 or receive treatment do not pose a threat to public safety.

18 (C) The prisoner is permanently medically incapacitated with
19 a medical condition that renders him or her permanently unable
20 to perform activities of basic daily living, and results in the prisoner
21 requiring 24-hour total care, including, but not limited to, coma,
22 persistent vegetative state, brain death, ventilator-dependency, loss
23 of control of muscular or neurological function, and that
24 incapacitation did not exist at the time of the original sentencing.

25 The Board of Parole Hearings shall make findings pursuant to
26 this subdivision before making a recommendation for resentence
27 or recall to the court. This subdivision does not apply to a prisoner
28 sentenced to death or a term of life without the possibility of parole.

29 (3) Within 10 days of receipt of a positive recommendation by
30 the secretary or the board, the court shall hold a hearing to consider
31 whether the prisoner's sentence should be recalled.

32 (4) Any physician employed by the department who determines
33 that a prisoner has six months or less to live shall notify the chief
34 medical officer of the prognosis. If the chief medical officer
35 concurs with the prognosis, he or she shall notify the warden.
36 Within 48 hours of receiving notification, the warden or the
37 warden's representative shall notify the prisoner of the recall and
38 resentencing procedures, and shall arrange for the prisoner to
39 designate a family member or other outside agent to be notified
40 as to the prisoner's medical condition and prognosis, and as to the

1 recall and resentencing procedures. If the inmate is deemed
2 mentally unfit, the warden or the warden's representative shall
3 contact the inmate's emergency contact and provide the information
4 described in paragraph (2).

5 (5) The warden or the warden's representative shall provide the
6 prisoner and his or her family member, agent, or emergency
7 contact, as described in paragraph (4), updated information
8 throughout the recall and resentencing process with regard to the
9 prisoner's medical condition and the status of the prisoner's recall
10 and resentencing proceedings.

11 (6) Notwithstanding any other provisions of this section, the
12 prisoner or his or her family member or designee may
13 independently request consideration for recall and resentencing
14 by contacting the chief medical officer at the prison or the
15 secretary. Upon receipt of the request, the chief medical officer
16 and the warden or the warden's representative shall follow the
17 procedures described in paragraph (4). If the secretary determines
18 that the prisoner satisfies the criteria set forth in paragraph (2), the
19 secretary or board may recommend to the court that the prisoner's
20 sentence be recalled. The secretary shall submit a recommendation
21 for release within 30 days in the case of inmates sentenced to
22 determinate terms and, in the case of inmates sentenced to
23 indeterminate terms, the secretary shall make a recommendation
24 to the Board of Parole Hearings with respect to the inmates who
25 have applied under this section. The board shall consider this
26 information and make an independent judgment pursuant to
27 paragraph (2) and make findings related thereto before rejecting
28 the request or making a recommendation to the court. This action
29 shall be taken at the next lawfully noticed board meeting.

30 (7) Any recommendation for recall submitted to the court by
31 the secretary or the Board of Parole Hearings shall include one or
32 more medical evaluations, a postrelease plan, and findings pursuant
33 to paragraph (2).

34 (8) If possible, the matter shall be heard before the same judge
35 of the court who sentenced the prisoner.

36 (9) If the court grants the recall and resentencing application,
37 the prisoner shall be released by the department within 48 hours
38 of receipt of the court's order, unless a longer time period is agreed
39 to by the inmate. At the time of release, the warden or the warden's
40 representative shall ensure that the prisoner has each of the

1 following in his or her possession: a discharge medical summary,
2 full medical records, state identification, parole medications, and
3 all property belonging to the prisoner. After discharge, any
4 additional records shall be sent to the prisoner's forwarding
5 address.

6 (10) The secretary shall issue a directive to medical and
7 correctional staff employed by the department that details the
8 guidelines and procedures for initiating a recall and resentencing
9 procedure. The directive shall clearly state that any prisoner who
10 is given a prognosis of six months or less to live is eligible for
11 recall and resentencing consideration, and that recall and
12 resentencing procedures shall be initiated upon that prognosis.

13 (f) Notwithstanding any other provision of this section, for
14 purposes of paragraph (3) of subdivision (h), any allegation that
15 a defendant is eligible for state prison due to a prior or current
16 conviction, sentence enhancement, or because he or she is required
17 to register as a sex offender shall not be subject to dismissal
18 pursuant to Section 1385.

19 (g) A sentence to state prison for a determinate term for which
20 only one term is specified, is a sentence to state prison under this
21 section.

22 (h) (1) Except as provided in paragraph (3), a felony punishable
23 pursuant to this subdivision where the term is not specified in the
24 underlying offense shall be punishable by a term of imprisonment
25 in a county jail for 16 months, or two or three years.

26 (2) Except as provided in paragraph (3), a felony punishable
27 pursuant to this subdivision shall be punishable by imprisonment
28 in a county jail for the term described in the underlying offense.

29 (3) Notwithstanding paragraphs (1) and (2), where the defendant
30 (A) has a prior or current felony conviction for a serious felony
31 described in subdivision (c) of Section 1192.7 or a prior or current
32 conviction for a violent felony described in subdivision (c) of
33 Section 667.5, (B) has a prior felony conviction in another
34 jurisdiction for an offense that has all of the elements of a serious
35 felony described in subdivision (c) of Section 1192.7 or a violent
36 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
37 ~~prior juvenile adjudication where the defendant was 16 years of~~
38 ~~age or older at the time he or she committed the prior offense of~~
39 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
40 ~~a violent felony described in subdivision (c) of Section 667.5, a~~

1 ~~prior juvenile adjudication in another jurisdiction for an offense~~
2 ~~that has all the elements of a serious felony described in subdivision~~
3 ~~(e) of Section 1192.7 or a violent felony described in subdivision~~
4 ~~(e) of Section 667.5, or a felony described in subdivision (b) of~~
5 ~~Section 707 of the Welfare and Institutions Code, (D) is required~~
6 ~~to register as a sex offender pursuant to Chapter 5.5 (commencing~~
7 ~~with Section 290) of Title 9 of Part 1, or (E) (D) is convicted of a~~
8 ~~crime and as part of the sentence an enhancement pursuant to~~
9 ~~Section 186.11 is imposed, an executed sentence for a felony~~
10 ~~punishable pursuant to this subdivision shall be served in state~~
11 ~~prison.~~

12 (4) Nothing in this subdivision shall be construed to prevent
13 other dispositions authorized by law, including pretrial diversion,
14 deferred entry of judgment, or an order granting probation pursuant
15 to Section 1203.1.

16 (5) The court, when imposing a sentence pursuant to paragraphs
17 (1) or (2) of this subdivision, may commit the defendant to county
18 jail as follows:

19 (A) For a full term in custody as determined in accordance with
20 the applicable sentencing law.

21 (B) For a term as determined in accordance with the applicable
22 sentencing law, but suspend execution of a concluding portion of
23 the term selected in the court's discretion, during which time the
24 defendant shall be supervised by the county probation officer in
25 accordance with the terms, conditions, and procedures generally
26 applicable to persons placed on probation, for the remaining
27 unserved portion of the sentence imposed by the court. The period
28 of supervision shall be mandatory, and may not be earlier
29 terminated except by court order. During the period when the
30 defendant is under such supervision, unless in actual custody
31 related to the sentence imposed by the court, the defendant shall
32 be entitled to only actual time credit against the term of
33 imprisonment imposed by the court.

34 (6) The sentencing changes made by the act that added this
35 subdivision shall be applied prospectively to any person sentenced
36 on or after October 1, 2011.

37 (i) This section shall remain in effect only until January 1, 2014,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before that date, deletes or extends that date.

SEC. 12.4. Section 1170 of the Penal Code, as amended by Section 4 of Chapter 136 of the Statutes of 2011, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death

1 penalty, that authorizes or restricts the granting of probation or
2 suspending the execution or imposition of sentence, or expressly
3 provides for imprisonment in the state prison for life. In any case
4 in which the amount of preimprisonment credit under Section
5 2900.5 or any other provision of law is equal to or exceeds any
6 sentence imposed pursuant to this chapter, the entire sentence shall
7 be deemed to have been served and the defendant shall not be
8 actually delivered to the custody of the secretary. The court shall
9 advise the defendant that he or she shall serve a period of parole
10 and order the defendant to report to the parole office closest to the
11 defendant's last legal residence, unless the in-custody credits equal
12 the total sentence, including both confinement time and the period
13 of parole. The sentence shall be deemed a separate prior prison
14 term under Section 667.5, and a copy of the judgment and other
15 necessary documentation shall be forwarded to the secretary.

16 (b) When a judgment of imprisonment is to be imposed and the
17 statute specifies three possible terms, the court shall order
18 imposition of the middle term, unless there are circumstances in
19 aggravation or mitigation of the crime. At least four days prior to
20 the time set for imposition of judgment, either party or the victim,
21 or the family of the victim if the victim is deceased, may submit
22 a statement in aggravation or mitigation to dispute facts in the
23 record or the probation officer's report, or to present additional
24 facts. In determining whether there are circumstances that justify
25 imposition of the upper or lower term, the court may consider the
26 record in the case, the probation officer's report, other reports,
27 including reports received pursuant to Section 1203.03, and
28 statements in aggravation or mitigation submitted by the
29 prosecution, the defendant, or the victim, or the family of the victim
30 if the victim is deceased, and any further evidence introduced at
31 the sentencing hearing. The court shall set forth on the record the
32 facts and reasons for imposing the upper or lower term. The court
33 may not impose an upper term by using the fact of any
34 enhancement upon which sentence is imposed under any provision
35 of law. A term of imprisonment shall not be specified if imposition
36 of sentence is suspended.

37 (c) The court shall state the reasons for its sentence choice on
38 the record at the time of sentencing. The court shall also inform
39 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section
2 3000.

3 (d) When a defendant subject to this section or subdivision (b)
4 of Section 1168 has been sentenced to be imprisoned in the state
5 prison and has been committed to the custody of the secretary, the
6 court may, within 120 days of the date of commitment on its own
7 motion, or at any time upon the recommendation of the secretary
8 or the Board of Parole Hearings, recall the sentence and
9 commitment previously ordered and resentence the defendant in
10 the same manner as if he or she had not previously been sentenced,
11 provided the new sentence, if any, is no greater than the initial
12 sentence. The resentence under this subdivision shall apply the
13 sentencing rules of the Judicial Council so as to eliminate disparity
14 of sentences and to promote uniformity of sentencing. Credit shall
15 be given for time served.

16 (e) (1) Notwithstanding any other law and consistent with
17 paragraph (1) of subdivision (a), if the secretary or the Board of
18 Parole Hearings or both determine that a prisoner satisfies the
19 criteria set forth in paragraph (2), the secretary or the board may
20 recommend to the court that the prisoner's sentence be recalled.

21 (2) The court shall have the discretion to resentence or recall if
22 the court finds that the facts described in subparagraphs (A) and
23 (B) or subparagraphs (B) and (C) exist:

24 (A) The prisoner is terminally ill with an incurable condition
25 caused by an illness or disease that would produce death within
26 six months, as determined by a physician employed by the
27 department.

28 (B) The conditions under which the prisoner would be released
29 or receive treatment do not pose a threat to public safety.

30 (C) The prisoner is permanently medically incapacitated with
31 a medical condition that renders him or her permanently unable
32 to perform activities of basic daily living, and results in the prisoner
33 requiring 24-hour total care, including, but not limited to, coma,
34 persistent vegetative state, brain death, ventilator-dependency, loss
35 of control of muscular or neurological function, and that
36 incapacitation did not exist at the time of the original sentencing.

37 The Board of Parole Hearings shall make findings pursuant to
38 this subdivision before making a recommendation for resentence
39 or recall to the court. This subdivision does not apply to a prisoner
40 sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by
2 the secretary or the board, the court shall hold a hearing to consider
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who determines
5 that a prisoner has six months or less to live shall notify the chief
6 medical officer of the prognosis. If the chief medical officer
7 concurs with the prognosis, he or she shall notify the warden.
8 Within 48 hours of receiving notification, the warden or the
9 warden's representative shall notify the prisoner of the recall and
10 resentencing procedures, and shall arrange for the prisoner to
11 designate a family member or other outside agent to be notified
12 as to the prisoner's medical condition and prognosis, and as to the
13 recall and resentencing procedures. If the inmate is deemed
14 mentally unfit, the warden or the warden's representative shall
15 contact the inmate's emergency contact and provide the information
16 described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the
18 prisoner and his or her family member, agent, or emergency
19 contact, as described in paragraph (4), updated information
20 throughout the recall and resentencing process with regard to the
21 prisoner's medical condition and the status of the prisoner's recall
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the
24 prisoner or his or her family member or designee may
25 independently request consideration for recall and resentencing
26 by contacting the chief medical officer at the prison or the
27 secretary. Upon receipt of the request, the chief medical officer
28 and the warden or the warden's representative shall follow the
29 procedures described in paragraph (4). If the secretary determines
30 that the prisoner satisfies the criteria set forth in paragraph (2), the
31 secretary or board may recommend to the court that the prisoner's
32 sentence be recalled. The secretary shall submit a recommendation
33 for release within 30 days in the case of inmates sentenced to
34 determinate terms and, in the case of inmates sentenced to
35 indeterminate terms, the secretary shall make a recommendation
36 to the Board of Parole Hearings with respect to the inmates who
37 have applied under this section. The board shall consider this
38 information and make an independent judgment pursuant to
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by
4 the secretary or the Board of Parole Hearings shall include one or
5 more medical evaluations, a postrelease plan, and findings pursuant
6 to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,
10 the prisoner shall be released by the department within 48 hours
11 of receipt of the court's order, unless a longer time period is agreed
12 to by the inmate. At the time of release, the warden or the warden's
13 representative shall ensure that the prisoner has each of the
14 following in his or her possession: a discharge medical summary,
15 full medical records, state identification, parole medications, and
16 all property belonging to the prisoner. After discharge, any
17 additional records shall be sent to the prisoner's forwarding
18 address.

19 (10) The secretary shall issue a directive to medical and
20 correctional staff employed by the department that details the
21 guidelines and procedures for initiating a recall and resentencing
22 procedure. The directive shall clearly state that any prisoner who
23 is given a prognosis of six months or less to live is eligible for
24 recall and resentencing consideration, and that recall and
25 resentencing procedures shall be initiated upon that prognosis.

26 (f) Notwithstanding any other provision of this section, for
27 purposes of paragraph (3) of subdivision (h), any allegation that
28 a defendant is eligible for state prison due to a prior or current
29 conviction, sentence enhancement, or because he or she is required
30 to register as a sex offender shall not be subject to dismissal
31 pursuant to Section 1385.

32 (g) A sentence to state prison for a determinate term for which
33 only one term is specified, is a sentence to state prison under this
34 section.

35 (h) (1) Except as provided in paragraph (3), a felony punishable
36 pursuant to this subdivision where the term is not specified in the
37 underlying offense shall be punishable by a term of imprisonment
38 in a county jail for 16 months, or two or three years.

1 (2) Except as provided in paragraph (3), a felony punishable
2 pursuant to this subdivision shall be punishable by imprisonment
3 in a county jail for the term described in the underlying offense.

4 (3) Notwithstanding paragraphs (1) and (2), where the defendant
5 (A) has a prior or current felony conviction for a serious felony
6 described in subdivision (c) of Section 1192.7 or a prior or current
7 conviction for a violent felony described in subdivision (c) of
8 Section 667.5, (B) has a prior felony conviction in another
9 jurisdiction for an offense that has all of the elements of a serious
10 felony described in subdivision (c) of Section 1192.7 or a violent
11 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
12 ~~prior juvenile adjudication where the defendant was 16 years of~~
13 ~~age or older at the time he or she committed the prior offense of~~
14 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
15 ~~a violent felony described in subdivision (c) of Section 667.5, a~~
16 ~~prior juvenile adjudication in another jurisdiction for an offense~~
17 ~~that has all the elements of a serious felony described in subdivision~~
18 ~~(c) of Section 1192.7 or a violent felony described in subdivision~~
19 ~~(c) of Section 667.5, or a felony described in subdivision (b) of~~
20 ~~Section 707 of the Welfare and Institutions Code, (D)~~ is required
21 to register as a sex offender pursuant to Chapter 5.5 (commencing
22 with Section 290) of Title 9 of Part 1, or ~~(E)~~ (D) is convicted of a
23 crime and as part of the sentence an enhancement pursuant to
24 Section 186.11 is imposed, an executed sentence for a felony
25 punishable pursuant to this subdivision shall be served in state
26 prison.

27 (4) Nothing in this subdivision shall be construed to prevent
28 other dispositions authorized by law, including pretrial diversion,
29 deferred entry of judgment, or an order granting probation pursuant
30 to Section 1203.1.

31 (5) The court, when imposing a sentence pursuant to paragraph
32 (1) or (2) of this subdivision, may commit the defendant to county
33 jail as follows:

34 (A) For a full term in custody as determined in accordance with
35 the applicable sentencing law.

36 (B) For a term as determined in accordance with the applicable
37 sentencing law, but suspend execution of a concluding portion of
38 the term selected in the court's discretion, during which time the
39 defendant shall be supervised by the county probation officer in
40 accordance with the terms, conditions, and procedures generally

1 applicable to persons placed on probation, for the remaining
2 unserved portion of the sentence imposed by the court. The period
3 of supervision shall be mandatory, and may not be earlier
4 terminated except by court order. During the period when the
5 defendant is under such supervision, unless in actual custody
6 related to the sentence imposed by the court, the defendant shall
7 be entitled to only actual time credit against the term of
8 imprisonment imposed by the court.

9 (6) The sentencing changes made by the act that added this
10 subdivision shall be applied prospectively to any person sentenced
11 on or after October 1, 2011.

12 (i) This section shall become operative on January 1, 2012.

13 SEC. 12.5. Section 1170 of the Penal Code, as amended by
14 Section 4 of Chapter 136 of the Statutes of 2011, is amended to
15 read:

16 1170. (a) (1) The Legislature finds and declares that the
17 purpose of imprisonment for crime is punishment. This purpose
18 is best served by terms proportionate to the seriousness of the
19 offense with provision for uniformity in the sentences of offenders
20 committing the same offense under similar circumstances. The
21 Legislature further finds and declares that the elimination of
22 disparity and the provision of uniformity of sentences can best be
23 achieved by determinate sentences fixed by statute in proportion
24 to the seriousness of the offense as determined by the Legislature
25 to be imposed by the court with specified discretion.

26 (2) Notwithstanding paragraph (1), the Legislature further finds
27 and declares that programs should be available for inmates,
28 including, but not limited to, educational programs, that are
29 designed to prepare nonviolent felony offenders for successful
30 reentry into the community. The Legislature encourages the
31 development of policies and programs designed to educate and
32 rehabilitate nonviolent felony offenders. In implementing this
33 section, the Department of Corrections and Rehabilitation is
34 encouraged to give priority enrollment in programs to promote
35 successful return to the community to an inmate with a short
36 remaining term of commitment and a release date that would allow
37 him or her adequate time to complete the program.

38 (3) In any case in which the punishment prescribed by statute
39 for a person convicted of a public offense is a term of imprisonment
40 in the state prison of any specification of three time periods, the

1 court shall sentence the defendant to one of the terms of
2 imprisonment specified unless the convicted person is given any
3 other disposition provided by law, including a fine, jail, probation,
4 or the suspension of imposition or execution of sentence or is
5 sentenced pursuant to subdivision (b) of Section 1168 because he
6 or she had committed his or her crime prior to July 1, 1977. In
7 sentencing the convicted person, the court shall apply the
8 sentencing rules of the Judicial Council. The court, unless it
9 determines that there are circumstances in mitigation of the
10 punishment prescribed, shall also impose any other term that it is
11 required by law to impose as an additional term. Nothing in this
12 article shall affect any provision of law that imposes the death
13 penalty, that authorizes or restricts the granting of probation or
14 suspending the execution or imposition of sentence, or expressly
15 provides for imprisonment in the state prison for life, except as
16 provided in paragraph (2) of subdivision (d). In any case in which
17 the amount of preimprisonment credit under Section 2900.5 or any
18 other provision of law is equal to or exceeds any sentence imposed
19 pursuant to this chapter, the entire sentence shall be deemed to
20 have been served and the defendant shall not be actually delivered
21 to the custody of the secretary. The court shall advise the defendant
22 that he or she shall serve a period of parole and order the defendant
23 to report to the parole office closest to the defendant's last legal
24 residence, unless the in-custody credits equal the total sentence,
25 including both confinement time and the period of parole. The
26 sentence shall be deemed a separate prior prison term under Section
27 667.5, and a copy of the judgment and other necessary
28 documentation shall be forwarded to the secretary.

29 (b) When a judgment of imprisonment is to be imposed and the
30 statute specifies three possible terms, the court shall order
31 imposition of the middle term, unless there are circumstances in
32 aggravation or mitigation of the crime. At least four days prior to
33 the time set for imposition of judgment, either party or the victim,
34 or the family of the victim if the victim is deceased, may submit
35 a statement in aggravation or mitigation to dispute facts in the
36 record or the probation officer's report, or to present additional
37 facts. In determining whether there are circumstances that justify
38 imposition of the upper or lower term, the court may consider the
39 record in the case, the probation officer's report, other reports,
40 including reports received pursuant to Section 1203.03, and

1 statements in aggravation or mitigation submitted by the
2 prosecution, the defendant, or the victim, or the family of the victim
3 if the victim is deceased, and any further evidence introduced at
4 the sentencing hearing. The court shall set forth on the record the
5 facts and reasons for imposing the upper or lower term. The court
6 may not impose an upper term by using the fact of any
7 enhancement upon which sentence is imposed under any provision
8 of law. A term of imprisonment shall not be specified if imposition
9 of sentence is suspended.

10 (c) The court shall state the reasons for its sentence choice on
11 the record at the time of sentencing. The court shall also inform
12 the defendant that as part of the sentence after expiration of the
13 term he or she may be on parole for a period as provided in Section
14 3000.

15 (d) (1) When a defendant subject to this section or subdivision
16 (b) of Section 1168 has been sentenced to be imprisoned in the
17 state prison and has been committed to the custody of the secretary,
18 the court may, within 120 days of the date of commitment on its
19 own motion, or at any time upon the recommendation of the
20 secretary or the Board of Parole Hearings, recall the sentence and
21 commitment previously ordered and resentence the defendant in
22 the same manner as if he or she had not previously been sentenced,
23 provided the new sentence, if any, is no greater than the initial
24 sentence. The court resentencing under this subdivision shall apply
25 the sentencing rules of the Judicial Council so as to eliminate
26 disparity of sentences and to promote uniformity of sentencing.
27 Credit shall be given for time served.

28 (2) (A) (i) When a defendant who was under 18 years of age
29 at the time of the commission of the offense for which the
30 defendant was sentenced to imprisonment for life without the
31 possibility of parole has served at least 15 years of that sentence,
32 the defendant may submit to the sentencing court a petition for
33 recall and resentencing.

34 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
35 *to defendants sentenced to life without parole for an offense where*
36 *the defendant tortured, as described in Section 206, his or her*
37 *victim or the victim was a public safety official, including any law*
38 *enforcement personnel mentioned in Chapter 4.5 (commencing*
39 *with Section 830) of Title 3, or any firefighter as described in*
40 *Section 245.1, as well as any other officer in any segment of law*

1 *enforcement who is employed by the federal government, the state,*
2 *or any of its political subdivisions.*

3 (B) The defendant shall file the original petition with the
4 sentencing court. A copy of the petition shall be served on the
5 agency that prosecuted the case. The petition shall include the
6 defendant's statement that he or she was under 18 years of age at
7 the time of the crime and was sentenced to life in prison without
8 the possibility of parole, the defendant's statement describing his
9 or her remorse and work towards rehabilitation, and the defendant's
10 statement that one of the following is true:

11 (i) The defendant was convicted pursuant to felony murder or
12 aiding and abetting murder provisions of law.

13 (ii) The defendant does not have juvenile felony adjudications
14 for assault or other felony crimes with a significant potential for
15 personal harm to victims prior to the offense for which the sentence
16 is being considered for recall.

17 (iii) The defendant committed the offense with at least one adult
18 codefendant.

19 (iv) The defendant has performed acts that tend to indicate
20 rehabilitation or the potential for rehabilitation, including, but not
21 limited to, availing himself or herself of rehabilitative, educational,
22 or vocational programs, if those programs have been available at
23 his or her classification level and facility, using self-study for
24 self-improvement, or showing evidence of remorse.

25 (C) If any of the information required in subparagraph (B) is
26 missing from the petition, or if proof of service on the prosecuting
27 agency is not provided, the court shall return the petition to the
28 defendant and advise the defendant that the matter cannot be
29 considered without the missing information.

30 (D) A reply to the petition, if any, shall be filed with the court
31 within 60 days of the date on which the prosecuting agency was
32 served with the petition, unless a continuance is granted for good
33 cause.

34 (E) If the court finds by a preponderance of the evidence that
35 the statements in the petition are true, the court shall hold a hearing
36 to consider whether to recall the sentence and commitment
37 previously ordered and to resentence the defendant in the same
38 manner as if the defendant had not previously been sentenced,
39 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is
2 deceased, shall retain the rights to participate in the hearing.

3 (F) The factors that the court may consider when determining
4 whether to recall and resentence include, but are not limited to,
5 the following:

6 (i) The defendant was convicted pursuant to felony murder or
7 aiding and abetting murder provisions of law.

8 (ii) The defendant does not have juvenile felony adjudications
9 for assault or other felony crimes with a significant potential for
10 personal harm to victims prior to the offense for which the sentence
11 is being considered for recall.

12 (iii) The defendant committed the offense with at least one adult
13 codefendant.

14 (iv) Prior to the offense for which the sentence is being
15 considered for recall, the defendant had insufficient adult support
16 or supervision and had suffered from psychological or physical
17 trauma, or significant stress.

18 (v) The defendant suffers from cognitive limitations due to
19 mental illness, developmental disabilities, or other factors that did
20 not constitute a defense, but influenced the defendant's
21 involvement in the offense.

22 (vi) The defendant has performed acts that tend to indicate
23 rehabilitation or the potential for rehabilitation, including, but not
24 limited to, availing himself or herself of rehabilitative, educational,
25 or vocational programs, if those programs have been available at
26 his or her classification level and facility, using self-study for
27 self-improvement, or showing evidence of remorse.

28 (vii) The defendant has maintained family ties or connections
29 with others through letter writing, calls, or visits, or has eliminated
30 contact with individuals outside of prison who are currently
31 involved with crime.

32 (viii) The defendant has had no disciplinary actions for violent
33 activities in the last five years in which the defendant was
34 determined to be the aggressor.

35 (G) The court shall have the discretion to recall the sentence
36 and commitment previously ordered and to resentence the
37 defendant in the same manner as if the defendant had not
38 previously been sentenced, provided that the new sentence, if any,
39 is not greater than the initial sentence. The discretion of the court
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,
2 shall be notified of the resentencing hearing and shall retain their
3 rights to participate in the hearing.

4 (H) If the sentence is not recalled, the defendant may submit
5 another petition for recall and resentencing to the sentencing court
6 when the defendant has been committed to the custody of the
7 department for at least 20 years. If recall and resentencing is not
8 granted under that petition, the defendant may file another petition
9 after having served 24 years. The final petition may be submitted,
10 and the response to that petition shall be determined, during the
11 25th year of the defendant's sentence.

12 (I) In addition to the criteria in subparagraph (F), the court may
13 consider any other criteria that the court deems relevant to its
14 decision, so long as the court identifies them on the record,
15 provides a statement of reasons for adopting them, and states why
16 the defendant does or does not satisfy the criteria.

17 (J) This subdivision shall have retroactive application.

18 (e) (1) Notwithstanding any other law and consistent with
19 paragraph (1) of subdivision (a), if the secretary or the Board of
20 Parole Hearings or both determine that a prisoner satisfies the
21 criteria set forth in paragraph (2), the secretary or the board may
22 recommend to the court that the prisoner's sentence be recalled.

23 (2) The court shall have the discretion to resentence or recall if
24 the court finds that the facts described in subparagraphs (A) and
25 (B) or subparagraphs (B) and (C) exist:

26 (A) The prisoner is terminally ill with an incurable condition
27 caused by an illness or disease that would produce death within
28 six months, as determined by a physician employed by the
29 department.

30 (B) The conditions under which the prisoner would be released
31 or receive treatment do not pose a threat to public safety.

32 (C) The prisoner is permanently medically incapacitated with
33 a medical condition that renders him or her permanently unable
34 to perform activities of basic daily living, and results in the prisoner
35 requiring 24-hour total care, including, but not limited to, coma,
36 persistent vegetative state, brain death, ventilator-dependency, loss
37 of control of muscular or neurological function, and that
38 incapacitation did not exist at the time of the original sentencing.

39 The Board of Parole Hearings shall make findings pursuant to
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner
2 sentenced to death or a term of life without the possibility of parole.

3 (3) Within 10 days of receipt of a positive recommendation by
4 the secretary or the board, the court shall hold a hearing to consider
5 whether the prisoner's sentence should be recalled.

6 (4) Any physician employed by the department who determines
7 that a prisoner has six months or less to live shall notify the chief
8 medical officer of the prognosis. If the chief medical officer
9 concurs with the prognosis, he or she shall notify the warden.
10 Within 48 hours of receiving notification, the warden or the
11 warden's representative shall notify the prisoner of the recall and
12 resentencing procedures, and shall arrange for the prisoner to
13 designate a family member or other outside agent to be notified
14 as to the prisoner's medical condition and prognosis, and as to the
15 recall and resentencing procedures. If the inmate is deemed
16 mentally unfit, the warden or the warden's representative shall
17 contact the inmate's emergency contact and provide the information
18 described in paragraph (2).

19 (5) The warden or the warden's representative shall provide the
20 prisoner and his or her family member, agent, or emergency
21 contact, as described in paragraph (4), updated information
22 throughout the recall and resentencing process with regard to the
23 prisoner's medical condition and the status of the prisoner's recall
24 and resentencing proceedings.

25 (6) Notwithstanding any other provisions of this section, the
26 prisoner or his or her family member or designee may
27 independently request consideration for recall and resentencing
28 by contacting the chief medical officer at the prison or the
29 secretary. Upon receipt of the request, the chief medical officer
30 and the warden or the warden's representative shall follow the
31 procedures described in paragraph (4). If the secretary determines
32 that the prisoner satisfies the criteria set forth in paragraph (2), the
33 secretary or board may recommend to the court that the prisoner's
34 sentence be recalled. The secretary shall submit a recommendation
35 for release within 30 days in the case of inmates sentenced to
36 determinate terms and, in the case of inmates sentenced to
37 indeterminate terms, the secretary shall make a recommendation
38 to the Board of Parole Hearings with respect to the inmates who
39 have applied under this section. The board shall consider this
40 information and make an independent judgment pursuant to

1 paragraph (2) and make findings related thereto before rejecting
2 the request or making a recommendation to the court. This action
3 shall be taken at the next lawfully noticed board meeting.

4 (7) Any recommendation for recall submitted to the court by
5 the secretary or the Board of Parole Hearings shall include one or
6 more medical evaluations, a postrelease plan, and findings pursuant
7 to paragraph (2).

8 (8) If possible, the matter shall be heard before the same judge
9 of the court who sentenced the prisoner.

10 (9) If the court grants the recall and resentencing application,
11 the prisoner shall be released by the department within 48 hours
12 of receipt of the court's order, unless a longer time period is agreed
13 to by the inmate. At the time of release, the warden or the warden's
14 representative shall ensure that the prisoner has each of the
15 following in his or her possession: a discharge medical summary,
16 full medical records, state identification, parole medications, and
17 all property belonging to the prisoner. After discharge, any
18 additional records shall be sent to the prisoner's forwarding
19 address.

20 (10) The secretary shall issue a directive to medical and
21 correctional staff employed by the department that details the
22 guidelines and procedures for initiating a recall and resentencing
23 procedure. The directive shall clearly state that any prisoner who
24 is given a prognosis of six months or less to live is eligible for
25 recall and resentencing consideration, and that recall and
26 resentencing procedures shall be initiated upon that prognosis.

27 (f) Notwithstanding any other provision of this section, for
28 purposes of paragraph (3) of subdivision (h), any allegation that
29 a defendant is eligible for state prison due to a prior or current
30 conviction, sentence enhancement, or because he or she is required
31 to register as a sex offender shall not be subject to dismissal
32 pursuant to Section 1385.

33 (g) A sentence to state prison for a determinate term for which
34 only one term is specified, is a sentence to state prison under this
35 section.

36 (h) (1) Except as provided in paragraph (3), a felony punishable
37 pursuant to this subdivision where the term is not specified in the
38 underlying offense shall be punishable by a term of imprisonment
39 in a county jail for 16 months, or two or three years.

1 (2) Except as provided in paragraph (3), a felony punishable
2 pursuant to this subdivision shall be punishable by imprisonment
3 in a county jail for the term described in the underlying offense.

4 (3) Notwithstanding paragraphs (1) and (2), where the defendant
5 (A) has a prior or current felony conviction for a serious felony
6 described in subdivision (c) of Section 1192.7 or a prior or current
7 conviction for a violent felony described in subdivision (c) of
8 Section 667.5, (B) has a prior felony conviction in another
9 jurisdiction for an offense that has all of the elements of a serious
10 felony described in subdivision (c) of Section 1192.7 or a violent
11 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
12 ~~prior juvenile adjudication where the defendant was 16 years of~~
13 ~~age or older at the time he or she committed the prior offense of~~
14 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
15 ~~a violent felony described in subdivision (c) of Section 667.5, a~~
16 ~~prior juvenile adjudication in another jurisdiction for an offense~~
17 ~~that has all the elements of a serious felony described in subdivision~~
18 ~~(c) of Section 1192.7 or a violent felony described in subdivision~~
19 ~~(c) of Section 667.5, or a felony described in subdivision (b) of~~
20 ~~Section 707 of the Welfare and Institutions Code, (D) is required~~
21 ~~to register as a sex offender pursuant to Chapter 5.5 (commencing~~
22 ~~with Section 290) of Title 9 of Part 1, or (E) (D) is convicted of a~~
23 ~~crime and as part of the sentence an enhancement pursuant to~~
24 ~~Section 186.11 is imposed, an executed sentence for a felony~~
25 ~~punishable pursuant to this subdivision shall be served in state~~
26 ~~prison.~~

27 (4) Nothing in this subdivision shall be construed to prevent
28 other dispositions authorized by law, including pretrial diversion,
29 deferred entry of judgment, or an order granting probation pursuant
30 to Section 1203.1.

31 (5) The court, when imposing a sentence pursuant to paragraphs
32 (1) or (2) of this subdivision, may commit the defendant to county
33 jail as follows:

34 (A) For a full term in custody as determined in accordance with
35 the applicable sentencing law.

36 (B) For a term as determined in accordance with the applicable
37 sentencing law, but suspend execution of a concluding portion of
38 the term selected in the court's discretion, during which time the
39 defendant shall be supervised by the county probation officer in
40 accordance with the terms, conditions, and procedures generally

1 applicable to persons placed on probation, for the remaining
2 unserved portion of the sentence imposed by the court. The period
3 of supervision shall be mandatory, and may not be earlier
4 terminated except by court order. During the period when the
5 defendant is under such supervision, unless in actual custody
6 related to the sentence imposed by the court, the defendant shall
7 be entitled to only actual time credit against the term of
8 imprisonment imposed by the court.

9 (6) The sentencing changes made by the act that added this
10 subdivision shall be applied prospectively to any person sentenced
11 on or after October 1, 2011.

12 (i) This section shall become operative on January 1, 2012.

13 SEC. 12.6. Section 1170 of the Penal Code, as amended by
14 Section 4 of Chapter 136 of the Statutes of 2011, is amended to
15 read:

16 1170. (a) (1) The Legislature finds and declares that the
17 purpose of imprisonment for crime is punishment. This purpose
18 is best served by terms proportionate to the seriousness of the
19 offense with provision for uniformity in the sentences of offenders
20 committing the same offense under similar circumstances. The
21 Legislature further finds and declares that the elimination of
22 disparity and the provision of uniformity of sentences can best be
23 achieved by determinate sentences fixed by statute in proportion
24 to the seriousness of the offense as determined by the Legislature
25 to be imposed by the court with specified discretion.

26 (2) Notwithstanding paragraph (1), the Legislature further finds
27 and declares that programs should be available for inmates,
28 including, but not limited to, educational programs, that are
29 designed to prepare nonviolent felony offenders for successful
30 reentry into the community. The Legislature encourages the
31 development of policies and programs designed to educate and
32 rehabilitate nonviolent felony offenders. In implementing this
33 section, the Department of Corrections and Rehabilitation is
34 encouraged to give priority enrollment in programs to promote
35 successful return to the community to an inmate with a short
36 remaining term of commitment and a release date that would allow
37 him or her adequate time to complete the program.

38 (3) In any case in which the punishment prescribed by statute
39 for a person convicted of a public offense is a term of imprisonment
40 in the state prison of any specification of three time periods, the

1 court shall sentence the defendant to one of the terms of
2 imprisonment specified unless the convicted person is given any
3 other disposition provided by law, including a fine, jail, probation,
4 or the suspension of imposition or execution of sentence or is
5 sentenced pursuant to subdivision (b) of Section 1168 because he
6 or she had committed his or her crime prior to July 1, 1977. In
7 sentencing the convicted person, the court shall apply the
8 sentencing rules of the Judicial Council. The court, unless it
9 determines that there are circumstances in mitigation of the
10 punishment prescribed, shall also impose any other term that it is
11 required by law to impose as an additional term. Nothing in this
12 article shall affect any provision of law that imposes the death
13 penalty, that authorizes or restricts the granting of probation or
14 suspending the execution or imposition of sentence, or expressly
15 provides for imprisonment in the state prison for life. In any case
16 in which the amount of preimprisonment credit under Section
17 2900.5 or any other provision of law is equal to or exceeds any
18 sentence imposed pursuant to this chapter, the entire sentence shall
19 be deemed to have been served and the defendant shall not be
20 actually delivered to the custody of the secretary. The court shall
21 advise the defendant that he or she shall serve a period of parole
22 and order the defendant to report to the parole office closest to the
23 defendant's last legal residence, unless the in-custody credits equal
24 the total sentence, including both confinement time and the period
25 of parole. The sentence shall be deemed a separate prior prison
26 term under Section 667.5, and a copy of the judgment and other
27 necessary documentation shall be forwarded to the secretary.

28 (b) When a judgment of imprisonment is to be imposed and the
29 statute specifies three possible terms, the court shall order
30 imposition of the middle term, unless there are circumstances in
31 aggravation or mitigation of the crime. At least four days prior to
32 the time set for imposition of judgment, either party or the victim,
33 or the family of the victim if the victim is deceased, may submit
34 a statement in aggravation or mitigation to dispute facts in the
35 record or the probation officer's report, or to present additional
36 facts. In determining whether there are circumstances that justify
37 imposition of the upper or lower term, the court may consider the
38 record in the case, the probation officer's report, other reports,
39 including reports received pursuant to Section 1203.03, and
40 statements in aggravation or mitigation submitted by the

1 prosecution, the defendant, or the victim, or the family of the victim
2 if the victim is deceased, and any further evidence introduced at
3 the sentencing hearing. The court shall set forth on the record the
4 facts and reasons for imposing the upper or lower term. The court
5 may not impose an upper term by using the fact of any
6 enhancement upon which sentence is imposed under any provision
7 of law. A term of imprisonment shall not be specified if imposition
8 of sentence is suspended.

9 (c) The court shall state the reasons for its sentence choice on
10 the record at the time of sentencing. The court shall also inform
11 the defendant that as part of the sentence after expiration of the
12 term he or she may be on parole for a period as provided in Section
13 3000.

14 (d) When a defendant subject to this section or subdivision (b)
15 of Section 1168 has been sentenced to be imprisoned in the state
16 prison and has been committed to the custody of the secretary, the
17 court may, within 120 days of the date of commitment on its own
18 motion, or at any time upon the recommendation of the secretary
19 or the Board of Parole Hearings, recall the sentence and
20 commitment previously ordered and resentence the defendant in
21 the same manner as if he or she had not previously been sentenced,
22 provided the new sentence, if any, is no greater than the initial
23 sentence. The resentence under this subdivision shall apply the
24 sentencing rules of the Judicial Council so as to eliminate disparity
25 of sentences and to promote uniformity of sentencing. Credit shall
26 be given for time served.

27 (e) (1) Notwithstanding any other law and consistent with
28 paragraph (1) of subdivision (a), if the secretary or the Board of
29 Parole Hearings or both determine that a prisoner satisfies the
30 criteria set forth in paragraph (2), the secretary or the board may
31 recommend to the court that the prisoner's sentence be recalled.

32 (2) The court shall have the discretion to resentence or recall if
33 the court finds that the facts described in subparagraphs (A) and
34 (B) or subparagraphs (B) and (C) exist:

35 (A) The prisoner is terminally ill with an incurable condition
36 caused by an illness or disease that would produce death within
37 six months, as determined by a physician employed by the
38 department.

39 (B) The conditions under which the prisoner would be released
40 or receive treatment do not pose a threat to public safety.

1 (C) The prisoner is permanently medically incapacitated with
2 a medical condition that renders him or her permanently unable
3 to perform activities of basic daily living, and results in the prisoner
4 requiring 24-hour total care, including, but not limited to, coma,
5 persistent vegetative state, brain death, ventilator-dependency, loss
6 of control of muscular or neurological function, and that
7 incapacitation did not exist at the time of the original sentencing.

8 The Board of Parole Hearings shall make findings pursuant to
9 this subdivision before making a recommendation for resentence
10 or recall to the court. This subdivision does not apply to a prisoner
11 sentenced to death or a term of life without the possibility of parole.

12 (3) Within 10 days of receipt of a positive recommendation by
13 the secretary or the board, the court shall hold a hearing to consider
14 whether the prisoner's sentence should be recalled.

15 (4) Any physician employed by the department who determines
16 that a prisoner has six months or less to live shall notify the chief
17 medical officer of the prognosis. If the chief medical officer
18 concurs with the prognosis, he or she shall notify the warden.
19 Within 48 hours of receiving notification, the warden or the
20 warden's representative shall notify the prisoner of the recall and
21 resentencing procedures, and shall arrange for the prisoner to
22 designate a family member or other outside agent to be notified
23 as to the prisoner's medical condition and prognosis, and as to the
24 recall and resentencing procedures. If the inmate is deemed
25 mentally unfit, the warden or the warden's representative shall
26 contact the inmate's emergency contact and provide the information
27 described in paragraph (2).

28 (5) The warden or the warden's representative shall provide the
29 prisoner and his or her family member, agent, or emergency
30 contact, as described in paragraph (4), updated information
31 throughout the recall and resentencing process with regard to the
32 prisoner's medical condition and the status of the prisoner's recall
33 and resentencing proceedings.

34 (6) Notwithstanding any other provisions of this section, the
35 prisoner or his or her family member or designee may
36 independently request consideration for recall and resentencing
37 by contacting the chief medical officer at the prison or the
38 secretary. Upon receipt of the request, the chief medical officer
39 and the warden or the warden's representative shall follow the
40 procedures described in paragraph (4). If the secretary determines

1 that the prisoner satisfies the criteria set forth in paragraph (2), the
2 secretary or board may recommend to the court that the prisoner's
3 sentence be recalled. The secretary shall submit a recommendation
4 for release within 30 days in the case of inmates sentenced to
5 determinate terms and, in the case of inmates sentenced to
6 indeterminate terms, the secretary shall make a recommendation
7 to the Board of Parole Hearings with respect to the inmates who
8 have applied under this section. The board shall consider this
9 information and make an independent judgment pursuant to
10 paragraph (2) and make findings related thereto before rejecting
11 the request or making a recommendation to the court. This action
12 shall be taken at the next lawfully noticed board meeting.

13 (7) Any recommendation for recall submitted to the court by
14 the secretary or the Board of Parole Hearings shall include one or
15 more medical evaluations, a postrelease plan, and findings pursuant
16 to paragraph (2).

17 (8) If possible, the matter shall be heard before the same judge
18 of the court who sentenced the prisoner.

19 (9) If the court grants the recall and resentencing application,
20 the prisoner shall be released by the department within 48 hours
21 of receipt of the court's order, unless a longer time period is agreed
22 to by the inmate. At the time of release, the warden or the warden's
23 representative shall ensure that the prisoner has each of the
24 following in his or her possession: a discharge medical summary,
25 full medical records, state identification, parole medications, and
26 all property belonging to the prisoner. After discharge, any
27 additional records shall be sent to the prisoner's forwarding
28 address.

29 (10) The secretary shall issue a directive to medical and
30 correctional staff employed by the department that details the
31 guidelines and procedures for initiating a recall and resentencing
32 procedure. The directive shall clearly state that any prisoner who
33 is given a prognosis of six months or less to live is eligible for
34 recall and resentencing consideration, and that recall and
35 resentencing procedures shall be initiated upon that prognosis.

36 (f) Notwithstanding any other provision of this section, for
37 purposes of paragraph (3) of subdivision (h), any allegation that
38 a defendant is eligible for state prison due to a prior or current
39 conviction, sentence enhancement, or because he or she is required

1 to register as a sex offender shall not be subject to dismissal
2 pursuant to Section 1385.

3 (g) A sentence to state prison for a determinate term for which
4 only one term is specified, is a sentence to state prison under this
5 section.

6 (h) (1) Except as provided in paragraph (3), a felony punishable
7 pursuant to this subdivision where the term is not specified in the
8 underlying offense shall be punishable by a term of imprisonment
9 in a county jail for 16 months, or two or three years.

10 (2) Except as provided in paragraph (3), a felony punishable
11 pursuant to this subdivision shall be punishable by imprisonment
12 in a county jail for the term described in the underlying offense.

13 (3) Notwithstanding paragraphs (1) and (2), where the defendant
14 (A) has a prior or current felony conviction for a serious felony
15 described in subdivision (c) of Section 1192.7 or a prior or current
16 conviction for a violent felony described in subdivision (c) of
17 Section 667.5, (B) has a prior felony conviction in another
18 jurisdiction for an offense that has all of the elements of a serious
19 felony described in subdivision (c) of Section 1192.7 or a violent
20 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
21 ~~prior juvenile adjudication where the defendant was 16 years of~~
22 ~~age or older at the time he or she committed the prior offense of~~
23 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
24 ~~a violent felony described in subdivision (c) of Section 667.5, a~~
25 ~~prior juvenile adjudication in another jurisdiction for an offense~~
26 ~~that has all the elements of a serious felony described in subdivision~~
27 ~~(c) of Section 1192.7 or a violent felony described in subdivision~~
28 ~~(c) of Section 667.5, or a felony described in subdivision (b) of~~
29 ~~Section 707 of the Welfare and Institutions Code, (D) is required~~
30 ~~to register as a sex offender pursuant to Chapter 5.5 (commencing~~
31 ~~with Section 290) of Title 9 of Part 1, or (E) (D) is convicted of a~~
32 ~~crime and as part of the sentence an enhancement pursuant to~~
33 ~~Section 186.11 is imposed, an executed sentence for a felony~~
34 ~~punishable pursuant to this subdivision shall be served in state~~
35 ~~prison.~~

36 (4) Nothing in this subdivision shall be construed to prevent
37 other dispositions authorized by law, including pretrial diversion,
38 deferred entry of judgment, or an order granting probation pursuant
39 to Section 1203.1.

1 (5) The court, when imposing a sentence pursuant to paragraphs
2 (1) or (2) of this subdivision, may commit the defendant to county
3 jail as follows:

4 (A) For a full term in custody as determined in accordance with
5 the applicable sentencing law.

6 (B) For a term as determined in accordance with the applicable
7 sentencing law, but suspend execution of a concluding portion of
8 the term selected in the court's discretion, during which time the
9 defendant shall be supervised by the county probation officer in
10 accordance with the terms, conditions, and procedures generally
11 applicable to persons placed on probation, for the remaining
12 unserved portion of the sentence imposed by the court. The period
13 of supervision shall be mandatory, and may not be earlier
14 terminated except by court order. During the period when the
15 defendant is under such supervision, unless in actual custody
16 related to the sentence imposed by the court, the defendant shall
17 be entitled to only actual time credit against the term of
18 imprisonment imposed by the court.

19 (6) The sentencing changes made by the act that added this
20 subdivision shall be applied prospectively to any person sentenced
21 on or after October 1, 2011.

22 (i) This section shall become operative on January 1, 2014.

23 SEC. 12.7. Section 1170 of the Penal Code, as amended by
24 Section 4 of Chapter 136 of the Statutes of 2011, is amended to
25 read:

26 1170. (a) (1) The Legislature finds and declares that the
27 purpose of imprisonment for crime is punishment. This purpose
28 is best served by terms proportionate to the seriousness of the
29 offense with provision for uniformity in the sentences of offenders
30 committing the same offense under similar circumstances. The
31 Legislature further finds and declares that the elimination of
32 disparity and the provision of uniformity of sentences can best be
33 achieved by determinate sentences fixed by statute in proportion
34 to the seriousness of the offense as determined by the Legislature
35 to be imposed by the court with specified discretion.

36 (2) Notwithstanding paragraph (1), the Legislature further finds
37 and declares that programs should be available for inmates,
38 including, but not limited to, educational programs, that are
39 designed to prepare nonviolent felony offenders for successful
40 reentry into the community. The Legislature encourages the

1 development of policies and programs designed to educate and
2 rehabilitate nonviolent felony offenders. In implementing this
3 section, the Department of Corrections and Rehabilitation is
4 encouraged to give priority enrollment in programs to promote
5 successful return to the community to an inmate with a short
6 remaining term of commitment and a release date that would allow
7 him or her adequate time to complete the program.

8 (3) In any case in which the punishment prescribed by statute
9 for a person convicted of a public offense is a term of imprisonment
10 in the state prison of any specification of three time periods, the
11 court shall sentence the defendant to one of the terms of
12 imprisonment specified unless the convicted person is given any
13 other disposition provided by law, including a fine, jail, probation,
14 or the suspension of imposition or execution of sentence or is
15 sentenced pursuant to subdivision (b) of Section 1168 because he
16 or she had committed his or her crime prior to July 1, 1977. In
17 sentencing the convicted person, the court shall apply the
18 sentencing rules of the Judicial Council. The court, unless it
19 determines that there are circumstances in mitigation of the
20 punishment prescribed, shall also impose any other term that it is
21 required by law to impose as an additional term. Nothing in this
22 article shall affect any provision of law that imposes the death
23 penalty, that authorizes or restricts the granting of probation or
24 suspending the execution or imposition of sentence, or expressly
25 provides for imprisonment in the state prison for life, except as
26 provided in paragraph (2) of subdivision (d). In any case in which
27 the amount of preimprisonment credit under Section 2900.5 or any
28 other provision of law is equal to or exceeds any sentence imposed
29 pursuant to this chapter, the entire sentence shall be deemed to
30 have been served and the defendant shall not be actually delivered
31 to the custody of the secretary. The court shall advise the defendant
32 that he or she shall serve a period of parole and order the defendant
33 to report to the parole office closest to the defendant's last legal
34 residence, unless the in-custody credits equal the total sentence,
35 including both confinement time and the period of parole. The
36 sentence shall be deemed a separate prior prison term under Section
37 667.5, and a copy of the judgment and other necessary
38 documentation shall be forwarded to the secretary.

39 (b) When a judgment of imprisonment is to be imposed and the
40 statute specifies three possible terms, the court shall order

1 imposition of the middle term, unless there are circumstances in
2 aggravation or mitigation of the crime. At least four days prior to
3 the time set for imposition of judgment, either party or the victim,
4 or the family of the victim if the victim is deceased, may submit
5 a statement in aggravation or mitigation to dispute facts in the
6 record or the probation officer's report, or to present additional
7 facts. In determining whether there are circumstances that justify
8 imposition of the upper or lower term, the court may consider the
9 record in the case, the probation officer's report, other reports,
10 including reports received pursuant to Section 1203.03, and
11 statements in aggravation or mitigation submitted by the
12 prosecution, the defendant, or the victim, or the family of the victim
13 if the victim is deceased, and any further evidence introduced at
14 the sentencing hearing. The court shall set forth on the record the
15 facts and reasons for imposing the upper or lower term. The court
16 may not impose an upper term by using the fact of any
17 enhancement upon which sentence is imposed under any provision
18 of law. A term of imprisonment shall not be specified if imposition
19 of sentence is suspended.

20 (c) The court shall state the reasons for its sentence choice on
21 the record at the time of sentencing. The court shall also inform
22 the defendant that as part of the sentence after expiration of the
23 term he or she may be on parole for a period as provided in Section
24 3000.

25 (d) (1) When a defendant subject to this section or subdivision
26 (b) of Section 1168 has been sentenced to be imprisoned in the
27 state prison and has been committed to the custody of the secretary,
28 the court may, within 120 days of the date of commitment on its
29 own motion, or at any time upon the recommendation of the
30 secretary or the Board of Parole Hearings, recall the sentence and
31 commitment previously ordered and resentence the defendant in
32 the same manner as if he or she had not previously been sentenced,
33 provided the new sentence, if any, is no greater than the initial
34 sentence. The court resentencing under this subdivision shall apply
35 the sentencing rules of the Judicial Council so as to eliminate
36 disparity of sentences and to promote uniformity of sentencing.
37 Credit shall be given for time served.

38 (2) (A) (i) When a defendant who was under 18 years of age
39 at the time of the commission of the offense for which the
40 defendant was sentenced to imprisonment for life without the

1 possibility of parole has served at least 15 years of that sentence,
2 the defendant may submit to the sentencing court a petition for
3 recall and resentencing.

4 *(ii) Notwithstanding clause (i), paragraph (2) shall not apply*
5 *to defendants sentenced to life without parole for an offense where*
6 *the defendant tortured, as described in Section 206, his or her*
7 *victim or the victim was a public safety official, including any law*
8 *enforcement personnel mentioned in Chapter 4.5 (commencing*
9 *with Section 830) of Title 3, or any firefighter as described in*
10 *Section 245.1, as well as any other officer in any segment of law*
11 *enforcement who is employed by the federal government, the state,*
12 *or any of its political subdivisions.*

13 (B) The defendant shall file the original petition with the
14 sentencing court. A copy of the petition shall be served on the
15 agency that prosecuted the case. The petition shall include the
16 defendant's statement that he or she was under 18 years of age at
17 the time of the crime and was sentenced to life in prison without
18 the possibility of parole, the defendant's statement describing his
19 or her remorse and work towards rehabilitation, and the defendant's
20 statement that one of the following is true:

21 (i) The defendant was convicted pursuant to felony murder or
22 aiding and abetting murder provisions of law.

23 (ii) The defendant does not have juvenile felony adjudications
24 for assault or other felony crimes with a significant potential for
25 personal harm to victims prior to the offense for which the sentence
26 is being considered for recall.

27 (iii) The defendant committed the offense with at least one adult
28 codefendant.

29 (iv) The defendant has performed acts that tend to indicate
30 rehabilitation or the potential for rehabilitation, including, but not
31 limited to, availing himself or herself of rehabilitative, educational,
32 or vocational programs, if those programs have been available at
33 his or her classification level and facility, using self-study for
34 self-improvement, or showing evidence of remorse.

35 (C) If any of the information required in subparagraph (B) is
36 missing from the petition, or if proof of service on the prosecuting
37 agency is not provided, the court shall return the petition to the
38 defendant and advise the defendant that the matter cannot be
39 considered without the missing information.

1 (D) A reply to the petition, if any, shall be filed with the court
2 within 60 days of the date on which the prosecuting agency was
3 served with the petition, unless a continuance is granted for good
4 cause.

5 (E) If the court finds by a preponderance of the evidence that
6 the statements in the petition are true, the court shall hold a hearing
7 to consider whether to recall the sentence and commitment
8 previously ordered and to resentence the defendant in the same
9 manner as if the defendant had not previously been sentenced,
10 provided that the new sentence, if any, is not greater than the initial
11 sentence. Victims, or victim family members if the victim is
12 deceased, shall retain the rights to participate in the hearing.

13 (F) The factors that the court may consider when determining
14 whether to recall and resentence include, but are not limited to,
15 the following:

16 (i) The defendant was convicted pursuant to felony murder or
17 aiding and abetting murder provisions of law.

18 (ii) The defendant does not have juvenile felony adjudications
19 for assault or other felony crimes with a significant potential for
20 personal harm to victims prior to the offense for which the sentence
21 is being considered for recall.

22 (iii) The defendant committed the offense with at least one adult
23 codefendant.

24 (iv) Prior to the offense for which the sentence is being
25 considered for recall, the defendant had insufficient adult support
26 or supervision and had suffered from psychological or physical
27 trauma, or significant stress.

28 (v) The defendant suffers from cognitive limitations due to
29 mental illness, developmental disabilities, or other factors that did
30 not constitute a defense, but influenced the defendant's
31 involvement in the offense.

32 (vi) The defendant has performed acts that tend to indicate
33 rehabilitation or the potential for rehabilitation, including, but not
34 limited to, availing himself or herself of rehabilitative, educational,
35 or vocational programs, if those programs have been available at
36 his or her classification level and facility, using self-study for
37 self-improvement, or showing evidence of remorse.

38 (vii) The defendant has maintained family ties or connections
39 with others through letter writing, calls, or visits, or has eliminated

1 contact with individuals outside of prison who are currently
2 involved with crime.

3 (viii) The defendant has had no disciplinary actions for violent
4 activities in the last five years in which the defendant was
5 determined to be the aggressor.

6 (G) The court shall have the discretion to recall the sentence
7 and commitment previously ordered and to resentence the
8 defendant in the same manner as if the defendant had not
9 previously been sentenced, provided that the new sentence, if any,
10 is not greater than the initial sentence. The discretion of the court
11 shall be exercised in consideration of the criteria in subparagraph
12 (B). Victims, or victim family members if the victim is deceased,
13 shall be notified of the resentencing hearing and shall retain their
14 rights to participate in the hearing.

15 (H) If the sentence is not recalled, the defendant may submit
16 another petition for recall and resentencing to the sentencing court
17 when the defendant has been committed to the custody of the
18 department for at least 20 years. If recall and resentencing is not
19 granted under that petition, the defendant may file another petition
20 after having served 24 years. The final petition may be submitted,
21 and the response to that petition shall be determined, during the
22 25th year of the defendant's sentence.

23 (I) In addition to the criteria in subparagraph (F), the court may
24 consider any other criteria that the court deems relevant to its
25 decision, so long as the court identifies them on the record,
26 provides a statement of reasons for adopting them, and states why
27 the defendant does or does not satisfy the criteria.

28 (J) This subdivision shall have retroactive application.

29 (e) (1) Notwithstanding any other law and consistent with
30 paragraph (1) of subdivision (a), if the secretary or the Board of
31 Parole Hearings or both determine that a prisoner satisfies the
32 criteria set forth in paragraph (2), the secretary or the board may
33 recommend to the court that the prisoner's sentence be recalled.

34 (2) The court shall have the discretion to resentence or recall if
35 the court finds that the facts described in subparagraphs (A) and
36 (B) or subparagraphs (B) and (C) exist:

37 (A) The prisoner is terminally ill with an incurable condition
38 caused by an illness or disease that would produce death within
39 six months, as determined by a physician employed by the
40 department.

1 (B) The conditions under which the prisoner would be released
2 or receive treatment do not pose a threat to public safety.

3 (C) The prisoner is permanently medically incapacitated with
4 a medical condition that renders him or her permanently unable
5 to perform activities of basic daily living, and results in the prisoner
6 requiring 24-hour total care, including, but not limited to, coma,
7 persistent vegetative state, brain death, ventilator-dependency, loss
8 of control of muscular or neurological function, and that
9 incapacitation did not exist at the time of the original sentencing.

10 The Board of Parole Hearings shall make findings pursuant to
11 this subdivision before making a recommendation for resentence
12 or recall to the court. This subdivision does not apply to a prisoner
13 sentenced to death or a term of life without the possibility of parole.

14 (3) Within 10 days of receipt of a positive recommendation by
15 the secretary or the board, the court shall hold a hearing to consider
16 whether the prisoner's sentence should be recalled.

17 (4) Any physician employed by the department who determines
18 that a prisoner has six months or less to live shall notify the chief
19 medical officer of the prognosis. If the chief medical officer
20 concurs with the prognosis, he or she shall notify the warden.
21 Within 48 hours of receiving notification, the warden or the
22 warden's representative shall notify the prisoner of the recall and
23 resentencing procedures, and shall arrange for the prisoner to
24 designate a family member or other outside agent to be notified
25 as to the prisoner's medical condition and prognosis, and as to the
26 recall and resentencing procedures. If the inmate is deemed
27 mentally unfit, the warden or the warden's representative shall
28 contact the inmate's emergency contact and provide the information
29 described in paragraph (2).

30 (5) The warden or the warden's representative shall provide the
31 prisoner and his or her family member, agent, or emergency
32 contact, as described in paragraph (4), updated information
33 throughout the recall and resentencing process with regard to the
34 prisoner's medical condition and the status of the prisoner's recall
35 and resentencing proceedings.

36 (6) Notwithstanding any other provisions of this section, the
37 prisoner or his or her family member or designee may
38 independently request consideration for recall and resentencing
39 by contacting the chief medical officer at the prison or the
40 secretary. Upon receipt of the request, the chief medical officer

1 and the warden or the warden's representative shall follow the
2 procedures described in paragraph (4). If the secretary determines
3 that the prisoner satisfies the criteria set forth in paragraph (2), the
4 secretary or board may recommend to the court that the prisoner's
5 sentence be recalled. The secretary shall submit a recommendation
6 for release within 30 days in the case of inmates sentenced to
7 determinate terms and, in the case of inmates sentenced to
8 indeterminate terms, the secretary shall make a recommendation
9 to the Board of Parole Hearings with respect to the inmates who
10 have applied under this section. The board shall consider this
11 information and make an independent judgment pursuant to
12 paragraph (2) and make findings related thereto before rejecting
13 the request or making a recommendation to the court. This action
14 shall be taken at the next lawfully noticed board meeting.

15 (7) Any recommendation for recall submitted to the court by
16 the secretary or the Board of Parole Hearings shall include one or
17 more medical evaluations, a postrelease plan, and findings pursuant
18 to paragraph (2).

19 (8) If possible, the matter shall be heard before the same judge
20 of the court who sentenced the prisoner.

21 (9) If the court grants the recall and resentencing application,
22 the prisoner shall be released by the department within 48 hours
23 of receipt of the court's order, unless a longer time period is agreed
24 to by the inmate. At the time of release, the warden or the warden's
25 representative shall ensure that the prisoner has each of the
26 following in his or her possession: a discharge medical summary,
27 full medical records, state identification, parole medications, and
28 all property belonging to the prisoner. After discharge, any
29 additional records shall be sent to the prisoner's forwarding
30 address.

31 (10) The secretary shall issue a directive to medical and
32 correctional staff employed by the department that details the
33 guidelines and procedures for initiating a recall and resentencing
34 procedure. The directive shall clearly state that any prisoner who
35 is given a prognosis of six months or less to live is eligible for
36 recall and resentencing consideration, and that recall and
37 resentencing procedures shall be initiated upon that prognosis.

38 (f) Notwithstanding any other provision of this section, for
39 purposes of paragraph (3) of subdivision (h), any allegation that
40 a defendant is eligible for state prison due to a prior or current

1 conviction, sentence enhancement, or because he or she is required
2 to register as a sex offender shall not be subject to dismissal
3 pursuant to Section 1385.

4 (g) A sentence to state prison for a determinate term for which
5 only one term is specified, is a sentence to state prison under this
6 section.

7 (h) (1) Except as provided in paragraph (3), a felony punishable
8 pursuant to this subdivision where the term is not specified in the
9 underlying offense shall be punishable by a term of imprisonment
10 in a county jail for 16 months, or two or three years.

11 (2) Except as provided in paragraph (3), a felony punishable
12 pursuant to this subdivision shall be punishable by imprisonment
13 in a county jail for the term described in the underlying offense.

14 (3) Notwithstanding paragraphs (1) and (2), where the defendant
15 (A) has a prior or current felony conviction for a serious felony
16 described in subdivision (c) of Section 1192.7 or a prior or current
17 conviction for a violent felony described in subdivision (c) of
18 Section 667.5, (B) has a prior felony conviction in another
19 jurisdiction for an offense that has all of the elements of a serious
20 felony described in subdivision (c) of Section 1192.7 or a violent
21 felony described in subdivision (c) of Section 667.5, (C) ~~has a~~
22 ~~prior juvenile adjudication where the defendant was 16 years of~~
23 ~~age or older at the time he or she committed the prior offense of~~
24 ~~a serious felony described in subdivision (c) of Section 1192.7 or~~
25 ~~a violent felony described in subdivision (c) of Section 667.5, a~~
26 ~~prior juvenile adjudication in another jurisdiction for an offense~~
27 ~~that has all the elements of a serious felony described in subdivision~~
28 ~~(c) of Section 1192.7 or a violent felony described in subdivision~~
29 ~~(c) of Section 667.5, or a felony described in subdivision (b) of~~
30 ~~Section 707 of the Welfare and Institutions Code, (D) is required~~
31 to register as a sex offender pursuant to Chapter 5.5 (commencing
32 with Section 290) of Title 9 of Part 1, or ~~(E) (D)~~ is convicted of a
33 crime and as part of the sentence an enhancement pursuant to
34 Section 186.11 is imposed, an executed sentence for a felony
35 punishable pursuant to this subdivision shall be served in state
36 prison.

37 (4) Nothing in this subdivision shall be construed to prevent
38 other dispositions authorized by law, including pretrial diversion,
39 deferred entry of judgment, or an order granting probation pursuant
40 to Section 1203.1.

1 (5) The court, when imposing a sentence pursuant to paragraphs
2 (1) or (2) of this subdivision, may commit the defendant to county
3 jail as follows:

4 (A) For a full term in custody as determined in accordance with
5 the applicable sentencing law.

6 (B) For a term as determined in accordance with the applicable
7 sentencing law, but suspend execution of a concluding portion of
8 the term selected in the court's discretion, during which time the
9 defendant shall be supervised by the county probation officer in
10 accordance with the terms, conditions, and procedures generally
11 applicable to persons placed on probation, for the remaining
12 unserved portion of the sentence imposed by the court. The period
13 of supervision shall be mandatory, and may not be earlier
14 terminated except by court order. During the period when the
15 defendant is under such supervision, unless in actual custody
16 related to the sentence imposed by the court, the defendant shall
17 be entitled to only actual time credit against the term of
18 imprisonment imposed by the court.

19 (6) The sentencing changes made by the act that added this
20 subdivision shall be applied prospectively to any person sentenced
21 on or after October 1, 2011.

22 (i) This section shall become operative on January 1, 2014.

23 SEC. 13. Section 1170.1 of the Penal Code, as amended by
24 Section 29 of Chapter 39 of the Statutes of 2011, is amended to
25 read:

26 1170.1. (a) Except as otherwise provided by law, and subject
27 to Section 654, when any person is convicted of two or more
28 felonies, whether in the same proceeding or court or in different
29 proceedings or courts, and whether by judgment rendered by the
30 same or by a different court, and a consecutive term of
31 imprisonment is imposed under Sections 669 and 1170, the
32 aggregate term of imprisonment for all these convictions shall be
33 the sum of the principal term, the subordinate term, and any
34 additional term imposed for applicable enhancements for prior
35 convictions, prior prison terms, and Section 12022.1. The principal
36 term shall consist of the greatest term of imprisonment imposed
37 by the court for any of the crimes, including any term imposed for
38 applicable specific enhancements. The subordinate term for each
39 consecutive offense shall consist of one-third of the middle term
40 of imprisonment prescribed for each other felony conviction for

1 which a consecutive term of imprisonment is imposed, and shall
2 include one-third of the term imposed for any specific
3 enhancements applicable to those subordinate offenses. Whenever
4 a court imposes a term of imprisonment in the state prison, whether
5 the term is a principal or subordinate term, the aggregate term shall
6 be served in the state prison, regardless as to whether or not one
7 of the terms specifies imprisonment in the county jail pursuant to
8 subdivision (h) of Section 1170.

9 (b) If a person is convicted of two or more violations of
10 kidnapping, as defined in Section 207, involving separate victims,
11 the subordinate term for each consecutive offense of kidnapping
12 shall consist of the full middle term and shall include the full term
13 imposed for specific enhancements applicable to those subordinate
14 offenses.

15 (c) In the case of any person convicted of one or more felonies
16 committed while the person is confined in a state prison or is
17 subject to reimprisonment for escape from custody and the law
18 either requires the terms to be served consecutively or the court
19 imposes consecutive terms, the term of imprisonment for all the
20 convictions that the person is required to serve consecutively shall
21 commence from the time the person would otherwise have been
22 released from prison. If the new offenses are consecutive with each
23 other, the principal and subordinate terms shall be calculated as
24 provided in subdivision (a). This subdivision shall be applicable
25 in cases of convictions of more than one offense in the same or
26 different proceedings.

27 (d) When the court imposes a sentence for a felony pursuant to
28 Section 1170 or subdivision (b) of Section 1168, the court shall
29 also impose, in addition and consecutive to the offense of which
30 the person has been convicted, the additional terms provided for
31 any applicable enhancements. If an enhancement is punishable by
32 one of three terms, the court shall, in its discretion, impose the
33 term that best serves the interest of justice, and state the reasons
34 for its sentence choice on the record at the time of sentencing. The
35 court shall also impose any other additional term that the court
36 determines in its discretion or as required by law shall run
37 consecutive to the term imposed under Section 1170 or subdivision
38 (b) of Section 1168. In considering the imposition of the additional
39 term, the court shall apply the sentencing rules of the Judicial
40 Council.

1 (e) All enhancements shall be alleged in the accusatory pleading
2 and either admitted by the defendant in open court or found to be
3 true by the trier of fact.

4 (f) When two or more enhancements may be imposed for being
5 armed with or using a dangerous or deadly weapon or a firearm
6 in the commission of a single offense, only the greatest of those
7 enhancements shall be imposed for that offense. This subdivision
8 shall not limit the imposition of any other enhancements applicable
9 to that offense, including an enhancement for the infliction of great
10 bodily injury.

11 (g) When two or more enhancements may be imposed for the
12 infliction of great bodily injury on the same victim in the
13 commission of a single offense, only the greatest of those
14 enhancements shall be imposed for that offense. This subdivision
15 shall not limit the imposition of any other enhancements applicable
16 to that offense, including an enhancement for being armed with
17 or using a dangerous or deadly weapon or a firearm.

18 (h) For any violation of an offense specified in Section 667.6,
19 the number of enhancements that may be imposed shall not be
20 limited, regardless of whether the enhancements are pursuant to
21 this section, Section 667.6, or some other provision of law. Each
22 of the enhancements shall be a full and separately served term.

23 (i) This section shall remain in effect only until January 1, 2014,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2012, deletes or extends that date.

26 SEC. 13.1. Section 1170.1 of the Penal Code, as amended by
27 Section 29 of Chapter 39 of the Statutes of 2011, is amended to
28 read:

29 1170.1. (a) Except as otherwise provided by law, and subject
30 to Section 654, when any person is convicted of two or more
31 felonies, whether in the same proceeding or court or in different
32 proceedings or courts, and whether by judgment rendered by the
33 same or by a different court, and a consecutive term of
34 imprisonment is imposed under Sections 669 and 1170, the
35 aggregate term of imprisonment for all these convictions shall be
36 the sum of the principal term, the subordinate term, and any
37 additional term imposed for applicable enhancements for prior
38 convictions, prior prison terms, and Section 12022.1. The principal
39 term shall consist of the greatest term of imprisonment imposed
40 by the court for any of the crimes, including any term imposed for

1 applicable specific enhancements. The subordinate term for each
2 consecutive offense shall consist of one-third of the middle term
3 of imprisonment prescribed for each other felony conviction for
4 which a consecutive term of imprisonment is imposed, and shall
5 include one-third of the term imposed for any specific
6 enhancements applicable to those subordinate offenses. Whenever
7 a court imposes a term of imprisonment in the state prison, whether
8 the term is a principal or subordinate term, the aggregate term shall
9 be served in the state prison, regardless as to whether or not one
10 of the terms specifies imprisonment in the county jail pursuant to
11 subdivision (h) of Section 1170.

12 (b) If a person is convicted of two or more violations of
13 kidnapping, as defined in Section 207, involving separate victims,
14 the subordinate term for each consecutive offense of kidnapping
15 shall consist of the full middle term and shall include the full term
16 imposed for specific enhancements applicable to those subordinate
17 offenses.

18 (c) In the case of any person convicted of one or more felonies
19 committed while the person is confined in a state prison or is
20 subject to reimprisonment for escape from custody and the law
21 either requires the terms to be served consecutively or the court
22 imposes consecutive terms, the term of imprisonment for all the
23 convictions that the person is required to serve consecutively shall
24 commence from the time the person would otherwise have been
25 released from prison. If the new offenses are consecutive with each
26 other, the principal and subordinate terms shall be calculated as
27 provided in subdivision (a). This subdivision shall be applicable
28 in cases of convictions of more than one offense in the same or
29 different proceedings.

30 (d) When the court imposes a sentence for a felony pursuant to
31 Section 1170 or subdivision (b) of Section 1168, the court shall
32 also impose, in addition and consecutive to the offense of which
33 the person has been convicted, the additional terms provided for
34 any applicable enhancements. If an enhancement is punishable by
35 one of three terms, the court shall, in its discretion, impose the
36 term that best serves the interest of justice, and state the reasons
37 for its sentence choice on the record at the time of sentencing. The
38 court shall also impose any other additional term that the court
39 determines in its discretion or as required by law shall run
40 consecutive to the term imposed under Section 1170 or subdivision

(b) of Section 1168. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury on the same victim in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

(h) For any violation of an offense specified in Section 667.6, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other provision of law. Each of the enhancements shall be a full and separately served term.

(i) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 13.2. Section 1170.1 of the Penal Code, as amended by Section 30 of Chapter 39 of the Statutes of 2011, is amended to read:

1170.1. (a) Except as otherwise provided by law, and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior

1 convictions, prior prison terms, and Section 12022.1. The principal
2 term shall consist of the greatest term of imprisonment imposed
3 by the court for any of the crimes, including any term imposed for
4 applicable specific enhancements. The subordinate term for each
5 consecutive offense shall consist of one-third of the middle term
6 of imprisonment prescribed for each other felony conviction for
7 which a consecutive term of imprisonment is imposed, and shall
8 include one-third of the term imposed for any specific
9 enhancements applicable to those subordinate offenses. Whenever
10 a court imposes a term of imprisonment in the state prison, whether
11 the term is a principal or subordinate term, the aggregate term shall
12 be served in the state prison, regardless as to whether or not one
13 of the terms specifies imprisonment in the county jail pursuant to
14 subdivision (h) of Section 1170.

15 (b) If a person is convicted of two or more violations of
16 kidnapping, as defined in Section 207, involving separate victims,
17 the subordinate term for each consecutive offense of kidnapping
18 shall consist of the full middle term and shall include the full term
19 imposed for specific enhancements applicable to those subordinate
20 offenses.

21 (c) In the case of any person convicted of one or more felonies
22 committed while the person is confined in a state prison or is
23 subject to reimprisonment for escape from custody and the law
24 either requires the terms to be served consecutively or the court
25 imposes consecutive terms, the term of imprisonment for all the
26 convictions that the person is required to serve consecutively shall
27 commence from the time the person would otherwise have been
28 released from prison. If the new offenses are consecutive with each
29 other, the principal and subordinate terms shall be calculated as
30 provided in subdivision (a). This subdivision shall be applicable
31 in cases of convictions of more than one offense in the same or
32 different proceedings.

33 (d) When the court imposes a sentence for a felony pursuant to
34 Section 1170 or subdivision (b) of Section 1168, the court shall
35 also impose, in addition and consecutive to the offense of which
36 the person has been convicted, the additional terms provided for
37 any applicable enhancements. If an enhancement is punishable by
38 one of three terms, the court shall impose the middle term unless
39 there are circumstances in aggravation or mitigation, and state the
40 reasons for its sentence choice, other than the middle term, on the

1 record at the time of sentencing. The court shall also impose any
2 other additional term that the court determines in its discretion or
3 as required by law shall run consecutive to the term imposed under
4 Section 1170 or subdivision (b) of Section 1168. In considering
5 the imposition of the additional term, the court shall apply the
6 sentencing rules of the Judicial Council.

7 (e) All enhancements shall be alleged in the accusatory pleading
8 and either admitted by the defendant in open court or found to be
9 true by the trier of fact.

10 (f) When two or more enhancements may be imposed for being
11 armed with or using a dangerous or deadly weapon or a firearm
12 in the commission of a single offense, only the greatest of those
13 enhancements shall be imposed for that offense. This subdivision
14 shall not limit the imposition of any other enhancements applicable
15 to that offense, including an enhancement for the infliction of great
16 bodily injury.

17 (g) When two or more enhancements may be imposed for the
18 infliction of great bodily injury on the same victim in the
19 commission of a single offense, only the greatest of those
20 enhancements shall be imposed for that offense. This subdivision
21 shall not limit the imposition of any other enhancements applicable
22 to that offense, including an enhancement for being armed with
23 or using a dangerous or deadly weapon or a firearm.

24 (h) For any violation of an offense specified in Section 667.6,
25 the number of enhancements that may be imposed shall not be
26 limited, regardless of whether the enhancements are pursuant to
27 this section, Section 667.6, or some other provision of law. Each
28 of the enhancements shall be a full and separately served term.

29 (i) This section shall become operative on January 1, 2012.

30 SEC. 13.3. Section 1170.1 of the Penal Code, as amended by
31 Section 30 of Chapter 39 of the Statutes of 2011, is amended to
32 read:

33 1170.1. (a) Except as otherwise provided by law, and subject
34 to Section 654, when any person is convicted of two or more
35 felonies, whether in the same proceeding or court or in different
36 proceedings or courts, and whether by judgment rendered by the
37 same or by a different court, and a consecutive term of
38 imprisonment is imposed under Sections 669 and 1170, the
39 aggregate term of imprisonment for all these convictions shall be
40 the sum of the principal term, the subordinate term, and any

1 additional term imposed for applicable enhancements for prior
2 convictions, prior prison terms, and Section 12022.1. The principal
3 term shall consist of the greatest term of imprisonment imposed
4 by the court for any of the crimes, including any term imposed for
5 applicable specific enhancements. The subordinate term for each
6 consecutive offense shall consist of one-third of the middle term
7 of imprisonment prescribed for each other felony conviction for
8 which a consecutive term of imprisonment is imposed, and shall
9 include one-third of the term imposed for any specific
10 enhancements applicable to those subordinate offenses. Whenever
11 a court imposes a term of imprisonment in the state prison, whether
12 the term is a principal or subordinate term, the aggregate term shall
13 be served in the state prison, regardless as to whether or not one
14 of the terms specifies imprisonment in the county jail pursuant to
15 subdivision (h) of Section 1170.

16 (b) If a person is convicted of two or more violations of
17 kidnapping, as defined in Section 207, involving separate victims,
18 the subordinate term for each consecutive offense of kidnapping
19 shall consist of the full middle term and shall include the full term
20 imposed for specific enhancements applicable to those subordinate
21 offenses.

22 (c) In the case of any person convicted of one or more felonies
23 committed while the person is confined in a state prison or is
24 subject to reimprisonment for escape from custody and the law
25 either requires the terms to be served consecutively or the court
26 imposes consecutive terms, the term of imprisonment for all the
27 convictions that the person is required to serve consecutively shall
28 commence from the time the person would otherwise have been
29 released from prison. If the new offenses are consecutive with each
30 other, the principal and subordinate terms shall be calculated as
31 provided in subdivision (a). This subdivision shall be applicable
32 in cases of convictions of more than one offense in the same or
33 different proceedings.

34 (d) When the court imposes a sentence for a felony pursuant to
35 Section 1170 or subdivision (b) of Section 1168, the court shall
36 also impose, in addition and consecutive to the offense of which
37 the person has been convicted, the additional terms provided for
38 any applicable enhancements. If an enhancement is punishable by
39 one of three terms, the court shall impose the middle term unless
40 there are circumstances in aggravation or mitigation, and state the

1 reasons for its sentence choice, other than the middle term, on the
2 record at the time of sentencing. The court shall also impose any
3 other additional term that the court determines in its discretion or
4 as required by law shall run consecutive to the term imposed under
5 Section 1170 or subdivision (b) of Section 1168. In considering
6 the imposition of the additional term, the court shall apply the
7 sentencing rules of the Judicial Council.

8 (e) All enhancements shall be alleged in the accusatory pleading
9 and either admitted by the defendant in open court or found to be
10 true by the trier of fact.

11 (f) When two or more enhancements may be imposed for being
12 armed with or using a dangerous or deadly weapon or a firearm
13 in the commission of a single offense, only the greatest of those
14 enhancements shall be imposed for that offense. This subdivision
15 shall not limit the imposition of any other enhancements applicable
16 to that offense, including an enhancement for the infliction of great
17 bodily injury.

18 (g) When two or more enhancements may be imposed for the
19 infliction of great bodily injury on the same victim in the
20 commission of a single offense, only the greatest of those
21 enhancements shall be imposed for that offense. This subdivision
22 shall not limit the imposition of any other enhancements applicable
23 to that offense, including an enhancement for being armed with
24 or using a dangerous or deadly weapon or a firearm.

25 (h) For any violation of an offense specified in Section 667.6,
26 the number of enhancements that may be imposed shall not be
27 limited, regardless of whether the enhancements are pursuant to
28 this section, Section 667.6, or some other provision of law. Each
29 of the enhancements shall be a full and separately served term.

30 (i) This section shall become operative on January 1, 2014.

31 SEC. 14. Section 1233.15 is added to the Penal Code, to read:

32 1233.15. The Director of Finance, in consultation with the
33 Administrative Office of the Courts, the Department of Corrections
34 and Rehabilitation, and the Chief Probation Officers of California,
35 shall develop a revised formula for the California Community
36 Corrections Performance Incentives Act of 2009 that takes into
37 consideration the significant changes to the eligibility of some
38 felony probationers for revocation to the state prison resulting from
39 the implementation of the 2011 Public Safety realignment. The

1 revised formula may include adjustments to the baseline failure
2 rate for each county.

3 SEC. 15. Section 2932 of the Penal Code, as amended by
4 Section 35 of Chapter 39 of the Statutes of 2011, is repealed.

5 SEC. 15.5. Section 2932 is added to the Penal Code, to read:

6 2932. (a) (1) For any time credit accumulated pursuant to
7 Section 2931 or to Section 2933, not more than 360 days of credit
8 may be denied or lost for a single act of murder, attempted murder,
9 solicitation of murder, manslaughter, rape, sodomy, or oral
10 copulation accomplished against the victim's will, attempted rape,
11 attempted sodomy, or attempted oral copulation accomplished
12 against the victim's will, assault or battery causing serious bodily
13 injury, assault with a deadly weapon or caustic substance, taking
14 of a hostage, escape with force or violence, or possession or
15 manufacture of a deadly weapon or explosive device, whether or
16 not prosecution is undertaken for purposes of this paragraph.
17 Solicitation of murder shall be proved by the testimony of two
18 witnesses, or of one witness and corroborating circumstances.

19 (2) Not more than 180 days of credit may be denied or lost for
20 a single act of misconduct, except as specified in paragraph (1),
21 which could be prosecuted as a felony whether or not prosecution
22 is undertaken.

23 (3) Not more than 90 days of credit may be denied or lost for
24 a single act of misconduct which could be prosecuted as a
25 misdemeanor, whether or not prosecution is undertaken.

26 (4) Not more than 30 days of credit may be denied or lost for
27 a single act of misconduct defined by regulation as a serious
28 disciplinary offense by the Department of Corrections and
29 Rehabilitation. Any person confined due to a change in custodial
30 classification following the commission of any serious disciplinary
31 infraction shall, in addition to any loss of time credits, be ineligible
32 to receive participation or worktime credit for a period not to
33 exceed the number of days of credit which have been lost for the
34 act of misconduct or 180 days, whichever is less. Any person
35 confined in a secure housing unit for having committed any
36 misconduct specified in paragraph (1) in which great bodily injury
37 is inflicted upon a nonprisoner shall, in addition to any loss of time
38 credits, be ineligible to receive participation or worktime credit
39 for a period not to exceed the number of days of credit which have
40 been lost for that act of misconduct. In unusual cases, an inmate

1 may be denied the opportunity to participate in a credit qualifying
2 assignment for up to six months beyond the period specified in
3 this subdivision if the Secretary of the Department of Corrections
4 and Rehabilitation finds, after a hearing, that no credit qualifying
5 program may be assigned to the inmate without creating a
6 substantial risk of physical harm to staff or other inmates. At the
7 end of the six-month period and of successive six-month periods,
8 the denial of the opportunity to participate in a credit qualifying
9 assignment may be renewed upon a hearing and finding by the
10 director.

11 (5) The prisoner may appeal the decision through the
12 department's review procedure, which shall include a review by
13 an individual independent of the institution who has supervisory
14 authority over the institution.

15 (b) For any credit accumulated pursuant to Section 2931, not
16 more than 30 days of participation credit may be denied or lost for
17 a single failure or refusal to participate. Any act of misconduct
18 described by the Department of Corrections and Rehabilitation as
19 a serious disciplinary infraction if committed while participating
20 in work, educational, vocational, therapeutic, or other prison
21 activity shall be deemed a failure to participate.

22 (c) Any procedure not provided for by this section, but necessary
23 to carry out the purposes of this section, shall be those procedures
24 provided for by the Department of Corrections and Rehabilitation
25 for serious disciplinary infractions if those procedures are not in
26 conflict with this section.

27 (1) (A) The Department of Corrections and Rehabilitation shall,
28 using reasonable diligence to investigate, provide written notice
29 to the prisoner. The written notice shall be given within 15 days
30 after the discovery of information leading to charges that may
31 result in a possible denial of credit, except that if the prisoner has
32 escaped, the notice shall be given within 15 days of the prisoner's
33 return to the custody of the secretary. The written notice shall
34 include the specific charge, the date, the time, the place that the
35 alleged misbehavior took place, the evidence relied upon, a written
36 explanation of the procedures that will be employed at the
37 proceedings and the prisoner's rights at the hearing. The hearing
38 shall be conducted by an individual who shall be independent of
39 the case and shall take place within 30 days of the written notice.

1 (B) The Department of Corrections and Rehabilitation may
2 delay written notice beyond 15 days when all of the following
3 factors are true:

4 (i) An act of misconduct is involved which could be prosecuted
5 as murder, attempted murder, or assault on a prison employee,
6 whether or not prosecution is undertaken.

7 (ii) Further investigation is being undertaken for the purpose of
8 identifying other prisoners involved in the misconduct.

9 (iii) Within 15 days after the discovery of information leading
10 to charges that may result in a possible denial of credit, the
11 investigating officer makes a written request to delay notifying
12 that prisoner and states the reasons for the delay.

13 (iv) The warden of the institution approves of the delay in
14 writing.

15 The period of delay under this paragraph shall not exceed 30
16 days. The prisoner's hearing shall take place within 30 days of the
17 written notice.

18 (2) The prisoner may elect to be assigned an employee to assist
19 in the investigation, preparation, or presentation of a defense at
20 the disciplinary hearing if it is determined by the department that:
21 (i) the prisoner is illiterate; or (ii) the complexity of the issues or
22 the prisoner's confinement status makes it unlikely that the prisoner
23 can collect and present the evidence necessary for an adequate
24 comprehension of the case.

25 (3) The prisoner may request witnesses to attend the hearing
26 and they shall be called unless the person conducting the hearing
27 has specific reasons to deny this request. The specific reasons shall
28 be set forth in writing and a copy of the document shall be
29 presented to the prisoner.

30 (4) The prisoner has the right, under the direction of the person
31 conducting the hearing, to question all witnesses.

32 (5) At the conclusion of the hearing the charge shall be
33 dismissed if the facts do not support the charge, or the prisoner
34 may be found guilty on the basis of a preponderance of the
35 evidence.

36 (d) If found guilty the prisoner shall be advised in writing of
37 the guilty finding and the specific evidence relied upon to reach
38 this conclusion and the amount of time-credit loss. The prisoner
39 may appeal the decision through the department's review
40 procedure, and may, upon final notification of appeal denial, within

1 15 days of the notification demand review of the department's
2 denial of credit to the Board of Prison Terms, and the board may
3 affirm, reverse, or modify the department's decision or grant a
4 hearing before the board at which hearing the prisoner shall have
5 the rights specified in Section 3041.5.

6 (e) Each prisoner subject to Section 2931 shall be notified of
7 the total amount of good behavior and participation credit which
8 may be credited pursuant to Section 2931, and his or her anticipated
9 time-credit release date. The prisoner shall be notified of any
10 change in the anticipated release date due to denial or loss of
11 credits, award of worktime credit, under Section 2933, or the
12 restoration of any credits previously forfeited.

13 (f) (1) If the conduct the prisoner is charged with also
14 constitutes a crime, the department may refer the case to criminal
15 authorities for possible prosecution. The department shall notify
16 the prisoner, who may request postponement of the disciplinary
17 proceedings pending the referral.

18 (2) The prisoner may revoke his or her request for postponement
19 of the disciplinary proceedings up until the filing of the accusatory
20 pleading. In the event of the revocation of the request for
21 postponement of the proceeding, the department shall hold the
22 hearing within 30 days of the revocation.

23 (3) Notwithstanding the notification requirements in this
24 paragraph and subparagraphs (A) and (B) of paragraph (1) of
25 subdivision (c), in the event the case is referred to criminal
26 authorities for prosecution and the authority requests that the
27 prisoner not be notified so as to protect the confidentiality of its
28 investigation, no notice to the prisoner shall be required until an
29 accusatory pleading is filed with the court, or the authority notifies
30 the warden, in writing, that it will not prosecute or it authorizes
31 the notification of the prisoner. The notice exceptions provided
32 for in this paragraph shall only apply if the criminal authority
33 requests of the warden, in writing, and within the 15 days provided
34 in subparagraph (A) of paragraph (1) of subdivision (c), that the
35 prisoner not be notified. Any period of delay of notice to the
36 prisoner shall not exceed 30 days beyond the 15 days referred to
37 in subdivision (c). In the event that no prosecution is undertaken,
38 the procedures in subdivision (c) shall apply, and the time periods
39 set forth in that subdivision shall commence to run from the date
40 the warden is notified in writing of the decision not to prosecute.

1 In the event the authority either cancels its requests that the prisoner
2 not be notified before it makes a decision on prosecution or files
3 an accusatory pleading, the provisions of this paragraph shall apply
4 as if no request had been received, beginning from the date of the
5 cancellation or filing.

6 (4) In the case where the prisoner is prosecuted by the district
7 attorney, the Department of Corrections and Rehabilitation shall
8 not deny time credit where the prisoner is found not guilty and
9 may deny credit if the prisoner is found guilty, in which case the
10 procedures in subdivision (c) shall not apply.

11 (g) If time credit denial proceedings or criminal prosecution
12 prohibit the release of a prisoner who would have otherwise been
13 released, and the prisoner is found not guilty of the alleged
14 misconduct, the amount of time spent incarcerated, in excess of
15 what the period of incarceration would have been absent the alleged
16 misbehavior, shall be deducted from the prisoner's parole period.

17 (h) Nothing in the amendments to this section made at the
18 1981–82 Regular Session of the Legislature shall affect the granting
19 or revocation of credits attributable to that portion of the prisoner's
20 sentence served prior to January 1, 1983.

21 SEC. 16. Section 2933 of the Penal Code is amended to read:

22 2933. (a) It is the intent of the Legislature that persons
23 convicted of a crime and sentenced to the state prison under Section
24 1170 serve the entire sentence imposed by the court, except for a
25 reduction in the time served in the custody of the Secretary of the
26 Department of Corrections and Rehabilitation pursuant to this
27 section and Section 2933.05.

28 (b) For every six months of continuous incarceration, a prisoner
29 shall be awarded credit reductions from his or her term of
30 confinement of six months. A lesser amount of credit based on
31 this ratio shall be awarded for any lesser period of continuous
32 incarceration. Credit should be awarded pursuant to regulations
33 adopted by the secretary. Prisoners who are denied the opportunity
34 to earn credits pursuant to subdivision (a) of Section 2932 shall
35 be awarded no credit reduction pursuant to this section. Under no
36 circumstances shall any prisoner receive more than six months'
37 credit reduction for any six-month period under this section.

38 (c) Credit is a privilege, not a right. Credit must be earned and
39 may be forfeited pursuant to the provisions of Section 2932. Except

1 as provided in subdivision (a) of Section 2932, every eligible
2 prisoner shall have a reasonable opportunity to participate.

3 (d) Under regulations adopted by the Department of Corrections
4 and Rehabilitation, which shall require a period of not more than
5 one year free of disciplinary infractions, credit which has been
6 previously forfeited may be restored by the secretary. The
7 regulations shall provide for separate classifications of serious
8 disciplinary infractions as they relate to restoration of credits, the
9 time period required before forfeited credits or a portion thereof
10 may be restored, and the percentage of forfeited credits that may
11 be restored for these time periods. For credits forfeited as specified
12 in paragraph (1) of subdivision (a) of Section 2932, the Department
13 of Corrections and Rehabilitation may provide that up to 180 days
14 of lost credit shall not be restored and up to 90 days of credit shall
15 not be restored for a forfeiture resulting from conspiracy or
16 attempts to commit one of those acts. No credits may be restored
17 if they were forfeited for a serious disciplinary infraction in which
18 the victim died or was permanently disabled. Upon application of
19 the prisoner and following completion of the required time period
20 free of disciplinary offenses, forfeited credits eligible for restoration
21 under the regulations for disciplinary offenses other than serious
22 disciplinary infractions punishable by a credit loss of more than
23 90 days shall be restored unless, at a hearing, it is found that the
24 prisoner refused to accept or failed to perform in a credit qualifying
25 assignment, or extraordinary circumstances are present that require
26 that credits not be restored. "Extraordinary circumstances" shall
27 be defined in the regulations adopted by the secretary. However,
28 in any case in which credit was forfeited for a serious disciplinary
29 infraction punishable by a credit loss of more than 90 days,
30 restoration of credit shall be at the discretion of the secretary.

31 The prisoner may appeal the finding through the Department of
32 Corrections and Rehabilitation's review procedure, which shall
33 include a review by an individual independent of the institution
34 who has supervisory authority over the institution.

35 (e) The provisions of subdivision (d) shall also apply in cases
36 of credit forfeited under Section 2931 for offenses and serious
37 disciplinary infractions occurring on or after January 1, 1983.

38 SEC. 17. Section 3000.08 of the Penal Code, as amended by
39 Section 37 of Chapter 39 of the Statutes of 2011, is amended to
40 read:

1 3000.08. (a) Persons released from state prison on or after
2 October 1, 2011, after serving a prison term or, whose sentence
3 has been deemed served pursuant to Section 2900.5, for any of the
4 following crimes shall be subject to the jurisdiction of and parole
5 supervision by the Department of Corrections and Rehabilitation:

6 (1) A serious felony as described in subdivision (c) of Section
7 1192.7.

8 (2) A violent felony as described in subdivision (c) of Section
9 667.5.

10 (3) A crime for which the person was sentenced pursuant to
11 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
12 of subdivision (c) of Section 1170.12.

13 (4) Any crime where the person eligible for release from prison
14 is classified as a High Risk Sex Offender.

15 (5) Any crime where the person is required, as a condition of
16 parole, to undergo treatment by the Department of Mental Health
17 pursuant to Section 2962.

18 (b) Notwithstanding any other provision of law, all other
19 offenders released from prison shall be placed on postrelease
20 supervision pursuant to Title 2.05 (commencing with Section
21 3450).

22 (c) Notwithstanding subdivision (a), any of the following
23 persons released from state prison shall be subject to the
24 jurisdiction of, and parole supervision by, the Department of
25 Corrections and Rehabilitation for a period of parole up to three
26 years or the parole term the person was subject to at the time of
27 the commission of the offense, whichever is greater:

28 (1) The person is required to register as a sex offender pursuant
29 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
30 1, and was subject to a period of parole exceeding three years at
31 the time he or she committed a felony for which they were
32 convicted and subsequently sentenced to state prison.

33 (2) The person was subject to parole for life pursuant to Section
34 3000.1 at the time of the commission of the offense that resulted
35 in a conviction and state prison sentence.

36 (d) Except as described in subdivision (c), any person who is
37 convicted of a felony that requires community supervision and
38 who still has a period of state parole to serve shall discharge from
39 state parole at the time of release to community supervision.

(e) This section shall operative only until July 1, 2013, and as of January 1, 2014 is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 18. Section 3000.08 of the Penal Code, as amended by Section 5 of Chapter 136 of the Statutes of 2011, is amended to read:

3000.08. (a) Persons released from state prison prior to or on or after July 1, 2013, after serving a prison term or, whose sentence has been deemed served pursuant to Section 2900.5, for any of the following crimes shall be subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county where the parolee is released or resides for the purpose of hearing petitions to revoke parole and impose a term of custody:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime where the person eligible for release from prison is classified as a High Risk Sex Offender.

(5) Any crime where the person is required, as a condition of parole, to undergo treatment by the Department of Mental Health pursuant to Section 2962.

(b) Notwithstanding any other provision of law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

(c) At any time during the period of parole of a person subject to this section, if any parole agent or peace officer has probable cause to believe that the parolee is violating any term or condition of his or her parole, the agent or officer may, without warrant or other process and at any time until the final disposition of the case, arrest the person and bring him or her before the parole authority, or the parole authority may, in its discretion, issue a warrant for that person's arrest.

(d) Upon review of the alleged violation and a finding of good cause that the parolee has committed a violation of law or violated

1 his or her conditions of parole, the parole authority may impose
2 additional and appropriate conditions of supervision, including
3 rehabilitation and treatment services and appropriate incentives
4 for compliance, and impose immediate, structured, and intermediate
5 sanctions for parole violations, including flash incarceration in a
6 county jail. Periods of “flash incarceration,” as defined in
7 subdivision (e) are encouraged as one method of punishment for
8 violations of a parolee’s conditions of parole. Nothing in this
9 section is intended to preclude referrals to a reentry court pursuant
10 to Section 3015.

11 (e) “Flash incarceration” is a period of detention in county jail
12 due to a violation of a parolee’s conditions of parole. The length
13 of the detention period can range between one and 10 consecutive
14 days. Shorter, but if necessary more frequent, periods of detention
15 for violations of a parolee’s conditions of parole shall appropriately
16 punish a parolee while preventing the disruption in a work or home
17 establishment that typically arises from longer periods of detention.

18 (f) If the supervising parole agency has determined, following
19 application of its assessment processes, that intermediate sanctions
20 up to and including flash incarceration are not appropriate, the
21 supervising agency shall petition the revocation hearing officer
22 appointed pursuant to Section 71622.5 of the Government Code
23 in the county in which the parolee is being supervised to revoke
24 parole. At any point during the process initiated pursuant to this
25 section, a parolee may waive, in writing, his or her right to counsel,
26 admit the parole violation, waive a court hearing, and accept the
27 proposed parole modification. The petition shall include a written
28 report that contains additional information regarding the petition,
29 including the relevant terms and conditions of parole, the
30 circumstances of the alleged underlying violation, the history and
31 background of the parolee, and any recommendations. The Judicial
32 Council shall adopt forms and rules of court to establish uniform
33 statewide procedures to implement this subdivision, including the
34 minimum contents of supervision agency reports. Upon a finding
35 that the person has violated the conditions of parole, the revocation
36 hearing officer shall have authority to do any of the following:

37 (1) Return the person to parole supervision with modifications
38 of conditions, if appropriate, including a period of incarceration
39 in county jail.

1 (2) Revoke parole and order the person to confinement in the
2 county jail.

3 (3) Refer the person to a reentry court pursuant to Section 3015
4 or other evidence-based program in the court's discretion.

5 (g) Confinement pursuant to paragraphs (1) and (2) of
6 subdivision (f) shall not exceed a period of 180 days in the county
7 jail.

8 (h) Notwithstanding any other provision of law, in any case
9 where Section 3000.1 applies to a person who is on parole and
10 there is good cause to believe that the person has committed a
11 violation of law or violated his or her conditions of parole, and
12 there is imposed a period of imprisonment of longer than 30 days,
13 that person shall be remanded to the custody of the Department of
14 Corrections and Rehabilitation and the jurisdiction of the Board
15 of Parole Hearings for the purpose of future parole consideration.

16 (i) Notwithstanding subdivision (a), any of the following persons
17 released from state prison shall be subject to the jurisdiction of,
18 and parole supervision by, the Department of Corrections and
19 Rehabilitation for a period of parole up to three years or the parole
20 term the person was subject to at the time of the commission of
21 the offense, whichever is greater:

22 (1) The person is required to register as a sex offender pursuant
23 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
24 1, and was subject to a period of parole exceeding three years at
25 the time he or she committed a felony for which they were
26 convicted and subsequently sentenced to state prison.

27 (2) The person was subject to parole for life pursuant to Section
28 3000.1 at the time of the commission of the offense that resulted
29 in a conviction and state prison sentence.

30 (j) Parolees subject to this section who are being held for a
31 parole violation in a county jail on July 1, 2013, shall be subject
32 to the jurisdiction of the Board of Parole Hearings.

33 (k) Except as described in subdivision (c), any person who is
34 convicted of a felony that requires community supervision and
35 who still has a period of state parole to serve shall discharge from
36 state parole at the time of release to community supervision.

37 (l) This section shall become operative on July 1, 2013.

38 SEC. 19. Section 3000.09 of the Penal Code is amended to
39 read:

1 3000.09. (a) Notwithstanding any other law, any parolee who
2 was paroled from state prison prior to October 1, 2011, shall be
3 subject to this section.

4 (b) Parolees subject to this section shall remain under
5 supervision by the Department of Corrections and Rehabilitation
6 until one of the following occurs:

7 (1) Jurisdiction over the person is terminated by operation of
8 law.

9 (2) The supervising agent recommends to the parole authority
10 that the offender be discharged and the parole authority approves
11 the discharge.

12 (3) The offender is subject to a period of parole of up to three
13 years pursuant to paragraph (1) of subdivision (b) of Section 3000
14 and was not imprisoned for committing a violent felony, as defined
15 in subdivision (c) of Section 667.5, a serious felony, as defined by
16 subdivision (c) of Section 1192.7, or is required to register as a
17 sex offender pursuant to Section 290, and completes six
18 consecutive months of parole without violating their conditions,
19 at which time the supervising agent shall review and make a
20 recommendation on whether to discharge the offender to the parole
21 authority and the parole authority approves the discharge.

22 (c) Parolees subject to this section who are being held for a
23 parole violation in state prison on October 1, 2011, upon
24 completion of a revocation term on or after November 1, 2011,
25 shall either remain under parole supervision of the department
26 pursuant to Section 3000.08 or shall be placed on postrelease
27 community supervision pursuant to Title 2.05 (commencing with
28 Section 3450). Notwithstanding Section 3000.08, any parolee who
29 is in a county jail serving a term of parole revocation or being held
30 pursuant to Section 3056 on October 1, 2011, and is released
31 directly from county jail without returning to a state facility on or
32 after October 1, 2011, shall remain under the parole supervision
33 of the department. Any parolee that is pending final adjudication
34 of a parole revocation charge prior to October 1, whether located
35 in county jail or state prison, may be returned to state prison and
36 shall be confined pursuant to subdivisions (a) to (d), inclusive, of
37 Section 3057. Any subsequent parole revocations of a parolee on
38 postrelease community supervision shall be served in county jail
39 pursuant to Section 3056.

(d) Any parolee who was paroled prior to October 1, 2011, who commits a violation of parole shall, until July 1, 2013, be subject to parole revocation procedures in accordance with the rules and regulations of the department consistent with Division 2 of Title 15 of the California Code of Regulations. On and after July 1, 2013, any parolee who was paroled prior to October 1, 2011, shall be subject to the procedures established under Section 3000.08.

SEC. 20. Section 3001 of the Penal Code, as amended by Section 41 of Chapter 39 of the Statutes of 2011, is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, not imprisoned for a serious felony, as defined by subdivision (c) of Section 1192.7, or is not required to register as a sex offender pursuant to Section 290, has been released on parole from the state prison, and has been on parole continuously for six months since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections and Rehabilitation recommends to the Board of Parole Hearings that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on

1 parole continuously for three years since release from confinement,
2 the board shall discharge, within 30 days, the person from parole,
3 unless the board, for good cause, determines that the person will
4 be retained on parole. The board shall make a written record of its
5 determination and the department shall transmit a copy of that
6 determination to the parolee.

7 (c) Notwithstanding any other provision of law, when any person
8 referred to in paragraph (3) of subdivision (b) of Section 3000 has
9 been released on parole from the state prison, and has been on
10 parole continuously for six years and six months since release from
11 confinement, the board shall discharge, within 30 days, the person
12 from parole, unless the board, for good cause, determines that the
13 person will be retained on parole. The board shall make a written
14 record of its determination and the department shall transmit a
15 copy thereof to the parolee.

16 (d) In the event of a retention on parole, the parolee shall be
17 entitled to a review by the parole authority each year thereafter
18 until the maximum statutory period of parole has expired.

19 (e) The amendments to this section made during the 1987–88
20 Regular Session of the Legislature shall only be applied
21 prospectively and shall not extend the parole period for any person
22 whose eligibility for discharge from parole was fixed as of the
23 effective date of those amendments.

24 (f) The amendments made to subdivision (a) during the 2011–12
25 Regular Session and the First Extraordinary Session of the
26 Legislature shall apply prospectively from October 1, 2011, and
27 no person on parole prior to October 1, 2011, shall be discharged
28 from parole pursuant to subdivision (a) unless one of the following
29 circumstances exist:

30 (1) The person has been on parole continuously for six
31 consecutive months after October 1, 2011, and the person is not
32 retained by the Board of Parole Hearings for good cause.

33 (2) The person has, on or after October 1, 2011, been on parole
34 for one year and the Board of Parole Hearings does not retain the
35 person for good cause.

36 SEC. 21. Section 3003 of the Penal Code, as amended by
37 Section 473 of Chapter 39 of the Statutes of 2011, is amended to
38 read:

39 3003. (a) Except as otherwise provided in this section, an
40 inmate who is released on parole or postrelease supervision as

1 provided by Title 2.05 (commencing with Section 3450) shall be
2 returned to the county that was the last legal residence of the inmate
3 prior to his or her incarceration. For purposes of this subdivision,
4 “last legal residence” shall not be construed to mean the county
5 wherein the inmate committed an offense while confined in a state
6 prison or local jail facility or while confined for treatment in a
7 state hospital.

8 (b) Notwithstanding subdivision (a), an inmate may be returned
9 to another county if that would be in the best interests of the public.
10 If the Board of Parole Hearings setting the conditions of parole
11 for inmates sentenced pursuant to subdivision (b) of Section 1168,
12 as determined by the parole consideration panel, or the Department
13 of Corrections and Rehabilitation setting the conditions of parole
14 for inmates sentenced pursuant to Section 1170, decides on a return
15 to another county, it shall place its reasons in writing in the
16 parolee’s permanent record and include these reasons in the notice
17 to the sheriff or chief of police pursuant to Section 3058.6. In
18 making its decision, the paroling authority shall consider, among
19 others, the following factors, giving the greatest weight to the
20 protection of the victim and the safety of the community:

21 (1) The need to protect the life or safety of a victim, the parolee,
22 a witness, or any other person.

23 (2) Public concern that would reduce the chance that the
24 inmate’s parole would be successfully completed.

25 (3) The verified existence of a work offer, or an educational or
26 vocational training program.

27 (4) The existence of family in another county with whom the
28 inmate has maintained strong ties and whose support would
29 increase the chance that the inmate’s parole would be successfully
30 completed.

31 (5) The lack of necessary outpatient treatment programs for
32 parolees receiving treatment pursuant to Section 2960.

33 (c) The Department of Corrections and Rehabilitation, in
34 determining an out-of-county commitment, shall give priority to
35 the safety of the community and any witnesses and victims.

36 (d) In making its decision about an inmate who participated in
37 a joint venture program pursuant to Article 1.5 (commencing with
38 Section 2717.1) of Chapter 5, the paroling authority shall give
39 serious consideration to releasing him or her to the county where
40 the joint venture program employer is located if that employer

1 states to the paroling authority that he or she intends to employ
2 the inmate upon release.

3 (e) (1) The following information, if available, shall be released
4 by the Department of Corrections and Rehabilitation to local law
5 enforcement agencies regarding a paroled inmate or inmate placed
6 on postrelease supervision pursuant to Title 2.05 (commencing
7 with Section 3450) who is released in their jurisdictions:

8 (A) Last, first, and middle name.

9 (B) Birth date.

10 (C) Sex, race, height, weight, and hair and eye color.

11 (D) Date of parole and discharge.

12 (E) Registration status, if the inmate is required to register as a
13 result of a controlled substance, sex, or arson offense.

14 (F) California Criminal Information Number, FBI number, social
15 security number, and driver's license number.

16 (G) County of commitment.

17 (H) A description of scars, marks, and tattoos on the inmate.

18 (I) Offense or offenses for which the inmate was convicted that
19 resulted in parole in this instance.

20 (J) Address, including all of the following information:

21 (i) Street name and number. Post office box numbers are not
22 acceptable for purposes of this subparagraph.

23 (ii) City and ZIP Code.

24 (iii) Date that the address provided pursuant to this subparagraph
25 was proposed to be effective.

26 (K) Contact officer and unit, including all of the following
27 information:

28 (i) Name and telephone number of each contact officer.

29 (ii) Contact unit type of each contact officer such as units
30 responsible for parole, registration, or county probation.

31 (L) A digitized image of the photograph and at least a single
32 digit fingerprint of the parolee.

33 (M) A geographic coordinate for the parolee's residence location
34 for use with a Geographical Information System (GIS) or
35 comparable computer program.

36 (2) The information required by this subdivision shall come
37 from the statewide parolee database. The information obtained
38 from each source shall be based on the same timeframe.

39 (3) All of the information required by this subdivision shall be
40 provided utilizing a computer-to-computer transfer in a format

1 usable by a desktop computer system. The transfer of this
2 information shall be continually available to local law enforcement
3 agencies upon request.

4 (4) The unauthorized release or receipt of the information
5 described in this subdivision is a violation of Section 11143.

6 (f) Notwithstanding any other provision of law, an inmate who
7 is released on parole shall not be returned to a location within 35
8 miles of the actual residence of a victim of, or a witness to, a
9 violent felony as defined in paragraphs (1) to (7), inclusive, and
10 paragraph (16) of subdivision (c) of Section 667.5 or a felony in
11 which the defendant inflicts great bodily injury on any person other
12 than an accomplice that has been charged and proved as provided
13 for in Section 12022.53, 12022.7, or 12022.9, if the victim or
14 witness has requested additional distance in the placement of the
15 inmate on parole, and if the Board of Parole Hearings or the
16 Department of Corrections and Rehabilitation finds that there is a
17 need to protect the life, safety, or well-being of a victim or witness.

18 (g) Notwithstanding any other law, an inmate who is released
19 on parole for a violation of Section 288 or 288.5 whom the
20 Department of Corrections and Rehabilitation determines poses a
21 high risk to the public shall not be placed or reside, for the duration
22 of his or her parole, within one-half mile of any public or private
23 school including any or all of kindergarten and grades 1 to 12,
24 inclusive.

25 (h) Notwithstanding any other law, an inmate who is released
26 on parole for an offense involving stalking shall not be returned
27 to a location within 35 miles of the victim's actual residence or
28 place of employment if the victim or witness has requested
29 additional distance in the placement of the inmate on parole, and
30 if the Board of Parole Hearings or the Department of Corrections
31 and Rehabilitation finds that there is a need to protect the life,
32 safety, or well-being of the victim.

33 (i) The authority shall give consideration to the equitable
34 distribution of parolees and the proportion of out-of-county
35 commitments from a county compared to the number of
36 commitments from that county when making parole decisions.

37 (j) An inmate may be paroled to another state pursuant to any
38 other law. The Department of Corrections and Rehabilitation shall
39 coordinate with local entities regarding the placement of inmates

1 placed out of state on postrelease supervision pursuant to Title
2 2.05 (commencing with Section 3450).

3 (k) (1) Except as provided in paragraph (2), the Department of
4 Corrections and Rehabilitation shall be the agency primarily
5 responsible for, and shall have control over, the program, resources,
6 and staff implementing the Law Enforcement Automated Data
7 System (LEADS) in conformance with subdivision (e). County
8 agencies supervising inmates released to postrelease supervision
9 pursuant to Title 2.05 (commencing with Section 3450) shall
10 provide any information requested by the department to ensure
11 the availability of accurate information regarding inmates released
12 from state prison. This information may include the issuance of
13 warrants, revocations, or the termination of postrelease supervision.
14 On or before August 1, 2011, county agencies designated to
15 supervise inmates released to postrelease supervision shall notify
16 the department that the county agencies have been designated as
17 the local entity responsible for providing that supervision.

18 (2) Notwithstanding paragraph (1), the Department of Justice
19 shall be the agency primarily responsible for the proper release of
20 information under LEADS that relates to fingerprint cards.

21 (l) In addition to the requirements under subdivision (k), the
22 Department of Corrections and Rehabilitation shall submit to the
23 Department of Justice data to be included in the supervised release
24 file of the California Law Enforcement Telecommunications
25 System (CLETS) so that law enforcement can be advised through
26 CLETS of all persons on postrelease community supervision and
27 the county agency designated to provide supervision. The data
28 required by this subdivision shall be provided via electronic
29 transfer.

30 SEC. 22. Section 3056 of the Penal Code, as amended by
31 Section 44 of Chapter 39 of the Statutes of 2011, is amended to
32 read:

33 3056. (a) Prisoners on parole shall remain under the
34 supervision of the department but shall not be returned to prison
35 except as provided in subdivision (b) or as provided by subdivision
36 (c) of Section 3000.09. Except as provided by subdivision (c) of
37 Section 3000.09, upon revocation of parole, a parolee may be
38 housed in a county jail for a maximum of 180 days. When housed
39 in county facilities, parolees shall be under the legal custody and
40 jurisdiction of local county facilities. When released from custody,

1 parolees shall be returned to the parole supervision of the
2 department for the duration of parole.

3 (b) Inmates paroled pursuant to Section 3000.1 may be returned
4 to prison following the revocation of parole by the Board of Parole
5 Hearings until July 1, 2013, and thereafter by a court pursuant to
6 Section 3000.08.

7 SEC. 23. Section 3057 of the Penal Code, as amended by
8 Section 45 of Chapter 39 of the Statutes of 2011, is amended to
9 read:

10 3057. (a) Confinement pursuant to a revocation of parole in
11 the absence of a new conviction and commitment to prison under
12 other provisions of law, shall not exceed 12 months, except as
13 provided in subdivision (c).

14 (b) Upon completion of confinement pursuant to parole
15 revocation without a new commitment to prison, the inmate shall
16 be released on parole for a period which shall not extend beyond
17 that portion of the maximum statutory period of parole specified
18 by Section 3000 which was unexpired at the time of each
19 revocation.

20 (c) Notwithstanding the limitations in subdivision (a) and in
21 Section 3060.5 upon confinement pursuant to a parole revocation,
22 the parole authority may extend the confinement pursuant to parole
23 revocation for a maximum of an additional 12 months for
24 subsequent acts of misconduct committed by the parolee while
25 confined pursuant to that parole revocation. Upon a finding of
26 good cause to believe that a parolee has committed a subsequent
27 act of misconduct and utilizing procedures governing parole
28 revocation proceedings, the parole authority may extend the period
29 of confinement pursuant to parole revocation as follows: (1) not
30 more than 180 days for an act punishable as a felony, whether or
31 not prosecution is undertaken, (2) not more than 90 days for an
32 act punishable as a misdemeanor, whether or not prosecution is
33 undertaken, and (3) not more than 30 days for an act defined as a
34 serious disciplinary offense pursuant to subdivision (a) of Section
35 2932.

36 (d) (1) Except for parolees specified in paragraph (2), any
37 revocation period imposed under subdivision (a) may be reduced
38 in the same manner and to the same extent as a term of
39 imprisonment may be reduced by worktime credits under Section

1 2933. Worktime credit must be earned and may be forfeited
2 pursuant to the provisions of Section 2932.

3 Worktime credit forfeited shall not be restored.

4 (2) The following parolees shall not be eligible for credit under
5 this subdivision:

6 (A) Parolees who are sentenced under Section 1168 with a
7 maximum term of life imprisonment.

8 (B) Parolees who violated a condition of parole relating to
9 association with specified persons, entering prohibited areas,
10 attendance at parole outpatient clinics, or psychiatric attention.

11 (C) Parolees who were revoked for conduct described in, or that
12 could be prosecuted under any of the following sections, whether
13 or not prosecution is undertaken: Section 189, Section 191.5,
14 subdivision (a) of Section 192, subdivision (a) of Section 192.5,
15 Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of
16 Section 241, Section 244, paragraph (1) or (2) of subdivision (a)
17 of Section 245, paragraph (2) or (6) of subdivision (a) of Section
18 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section
19 264.1, subdivision (c) or (d) of Section 286, Section 288,
20 subdivision (c) or (d) of Section 288a, subdivision (a) of Section
21 289, 347, or 404, subdivision (a) of Section 451, Section 12022,
22 12022.5, 12022.53, 12022.7, 12022.8, or 25400, Chapter 2
23 (commencing with Section 29800) of Division 9 of Title 4 of Part
24 6, any provision listed in Section 16590, or Section 664 for any
25 attempt to engage in conduct described in or that could be
26 prosecuted under any of the above-mentioned sections.

27 (D) Parolees who were revoked for any reason if they had been
28 granted parole after conviction of any of the offenses specified in
29 subparagraph (C).

30 (E) Parolees who the parole authority finds at a revocation
31 hearing to be unsuitable for reduction of the period of confinement
32 because of the circumstances and gravity of the parole violation,
33 or because of prior criminal history.

34 (e) Commencing October 1, 2011, this section shall only apply
35 to inmates sentenced to a term of life imprisonment or parolees
36 that on or before September 30, 2011, are pending a final
37 adjudication of a parole revocation charge and subject to
38 subdivision (c) of Section 3000.09.

39 SEC. 24. Section 3060.7 of the Penal Code is amended to read:

1 3060.7. (a) (1) Notwithstanding any other law, the parole
2 authority shall notify any person released on parole or postrelease
3 community supervision pursuant to Title 2.05 (commencing with
4 Section 3450) of Part 3 who has been classified by the Department
5 of Corrections as included within the highest control or risk
6 classification that he or she shall be required to report to his or her
7 assigned parole officer or designated local supervising agency
8 within two days of release from the state prison.

9 (2) This section shall not prohibit the parole authority or local
10 supervising agency from requiring any person released on parole
11 or postrelease community supervision to report to his or her
12 assigned parole officer within a time period that is less than two
13 days from the time of release.

14 (b) The parole authority, within 24 hours of a parolee's failure
15 to report as required by this section, shall issue a written order
16 suspending the parole of that parolee, pending a hearing before
17 the parole authority, and shall issue a warrant for the parolee's
18 arrest.

19 (c) Upon the issuance of an arrest warrant for a parolee who
20 has been classified within the highest control or risk classification,
21 the assigned parole officer shall continue to carry the parolee on
22 his or her regular caseload and shall continue to search for the
23 parolee's whereabouts.

24 (d) With regard to any inmate subject to this section, the
25 Department of Corrections and Rehabilitation shall release an
26 inmate sentenced prior to the effective date of this section one or
27 two days before his or her scheduled release date if the inmate's
28 release date falls on the day before a holiday or weekend.

29 (e) With regard to any inmate subject to this section, the
30 Department of Corrections and Rehabilitation shall release an
31 inmate one or two days after his or her scheduled release date if
32 the release date falls on the day before a holiday or weekend.

33 SEC. 25. Section 3067 of the Penal Code is amended to read:

34 3067. (a) Any inmate who is eligible for release on parole
35 pursuant to this chapter or postrelease community supervision
36 pursuant to Title 2.05 (commencing with Section 3450) of Part 3
37 shall agree in writing to be subject to search or seizure by a parole
38 officer or other peace officer at any time of the day or night, with
39 or without a search warrant and with or without cause.

1 (b) Any inmate who does not comply with the provision of
2 subdivision (a) shall lose worktime credit earned pursuant to Article
3 2.5 (commencing with Section 2930) of Chapter 7 on a day-for-day
4 basis and shall not be released until he or she either complies with
5 the provision of subdivision (a) or has no remaining worktime
6 credit, whichever occurs earlier.

7 (c) This section shall only apply to an inmate who is eligible
8 for release on parole for an offense committed on or after January
9 1, 1997.

10 (d) It is not the intent of the Legislature to authorize law
11 enforcement officers to conduct searches for the sole purpose of
12 harassment.

13 (e) This section does not affect the power of the Secretary of
14 the Department of Corrections and Rehabilitation to prescribe and
15 amend rules and regulations pursuant to Section 5058.

16 SEC. 26. Section 3073.1 of the Penal Code is amended to read:

17 3073.1. Counties are hereby authorized to contract with the
18 Department of Corrections and Rehabilitation in order to obtain
19 correctional clinical services for inmates with mental health
20 problems who are released on postrelease community supervision
21 with mental health problems.

22 SEC. 27. Section 3450 of the Penal Code is amended to read:

23 3450. (a) This act shall be known and may be cited as the
24 Postrelease Community Supervision Act of 2011.

25 (b) The Legislature finds and declares all of the following:

26 (1) The Legislature reaffirms its commitment to reducing
27 recidivism among criminal offenders.

28 (2) Despite the dramatic increase in corrections spending over
29 the past two decades, national reincarceration rates for people
30 released from prison remain unchanged or have worsened. National
31 data show that about 40 percent of released individuals are
32 reincarcerated within three years. In California, the recidivism rate
33 for persons who have served time in prison is even greater than
34 the national average.

35 (3) Criminal justice policies that rely on the reincarceration of
36 parolees for technical violations do not result in improved public
37 safety.

38 (4) California must reinvest its criminal justice resources to
39 support community corrections programs and evidence-based

practices that will achieve improved public safety returns on this state's substantial investment in its criminal justice system.

(5) Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society.

(6) Community corrections programs require a partnership between local public safety entities and the county to provide and expand the use of community-based punishment for offenders paroled from state prison. Each county's local Community Corrections Partnership, as established in paragraph (2) of subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for persons subject to postrelease community supervision.

(7) Fiscal policy and correctional practices should align to promote a justice reinvestment strategy that fits each county. "Justice reinvestment" is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

(8) "Community-based punishment" means evidence-based correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Intermediate sanctions may be provided by local public safety entities directly or through public or private correctional service providers and include, but are not limited to, the following:

(A) Short-term "flash" incarceration in jail for a period of not more than 10 days.

(B) Intensive community supervision.

(C) Home detention with electronic monitoring or GPS monitoring.

(D) Mandatory community service.

1 (E) Restorative justice programs, such as mandatory victim
2 restitution and victim-offender reconciliation.

3 (F) Work, training, or education in a furlough program pursuant
4 to Section 1208.

5 (G) Work, in lieu of confinement, in a work release program
6 pursuant to Section 4024.2.

7 (H) Day reporting.

8 (I) Mandatory residential or nonresidential substance abuse
9 treatment programs.

10 (J) Mandatory random drug testing.

11 (K) Mother-infant care programs.

12 (L) Community-based residential programs offering structure,
13 supervision, drug treatment, alcohol treatment, literacy
14 programming, employment counseling, psychological counseling,
15 mental health treatment, or any combination of these and other
16 interventions.

17 (9) “Evidence-based practices” refers to supervision policies,
18 procedures, programs, and practices demonstrated by scientific
19 research to reduce recidivism among individuals under probation,
20 parole, or postrelease supervision.

21 SEC. 28. Section 3453 of the Penal Code is amended to read:
22 3453. A postrelease community supervision agreement shall
23 include the following conditions:

24 (a) The person shall sign and agree to the conditions of release.

25 (b) The person shall obey all laws.

26 (c) The person shall report to the supervising county agency
27 within two working days of release from custody.

28 (d) The person shall follow the directives and instructions of
29 the supervising county agency.

30 (e) The person shall report to the supervising county agency as
31 directed by that agency.

32 (f) The person, and his or her residence and possessions, shall
33 be subject to search at any time of the day or night, with or without
34 a warrant, by an agent of the supervising county agency or by a
35 peace officer.

36 (g) The person shall waive extradition if found outside the state.

37 (h) The person shall inform the supervising county agency of
38 the person’s place of residence, employment, education, or training.

(i) (1) The person shall inform the supervising county agency of any pending or anticipated changes in residence, employment, education, or training.

(2) If the person enters into new employment, he or she shall inform the supervising county agency of the new employment within three business days of that entry.

(j) The person shall immediately inform the supervising county agency if he or she is arrested or receives a citation.

(k) The person shall obtain the permission of the supervising county agency to travel more than 50 miles from the person's place of residence.

(l) The person shall obtain a travel pass from the supervising county agency before he or she may leave the county or state for more than two days.

(m) The person shall not be in the presence of a firearm or ammunition, or any item that appears to be a firearm or ammunition.

(n) The person shall not possess, use, or have access to any weapon listed in Section 12020, 16140, subdivision (c) of Section 16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision (b) of Section 16460, Section 16470, subdivision (f) of Section 16520, or Section 16570, 16740, 16760, 16830, 16920, 16930, 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270, 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720, 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200, 20310, 20410, 20510, 20611, 20710, 20910, 21110, 21310, 21810, 22010, 22015, 22210, 22215, 22410, 32430, 24310, 24410, 24510, 24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405, 32410, 32415, 32420, 32425, 32435, 32440, 32445, 32450, 32900, 33215, 33220, 33225, or 33600.

(o) (1) Except as provided in paragraph (2) and subdivision (p), the person shall not possess a knife with a blade longer than two inches.

(2) The person may possess a kitchen knife with a blade longer than two inches if the knife is used and kept only in the kitchen of the person's residence.

(p) The person may use a knife with a blade longer than two inches, if the use is required for that person's employment, the use has been approved in a document issued by the supervising county

1 agency, and the person possesses the document of approval at all
2 times and makes it available for inspection.

3 (q) The person agrees to waive any right to a court hearing prior
4 to the imposition of a period of “flash incarceration” in a county
5 jail of not more than 10 consecutive days for any violation of his
6 or her postrelease supervision conditions.

7 (r) The person agrees to participate in rehabilitation
8 programming as recommended by the supervising county agency.

9 (s) The person agrees that he or she may be subject to arrest
10 with or without a warrant by a peace officer employed by the
11 supervising county agency or, at the direction of the supervising
12 county agency, by any peace officer when there is probable cause
13 to believe the person has violated the terms and conditions of his
14 or her release.

15 SEC. 29. Section 3454 of the Penal Code is amended to read:

16 3454. (a) Each supervising county agency, as established by
17 the county board of supervisors pursuant to subdivision (a) of
18 Section 3451, shall establish a review process for assessing and
19 refining a person’s program of postrelease supervision. Any
20 additional postrelease supervision conditions shall be reasonably
21 related to the underlying offense for which the offender spent time
22 in prison, or to the offender’s risk of recidivism, and the offender’s
23 criminal history, and be otherwise consistent with law.

24 (b) Each county agency responsible for postrelease supervision,
25 as established by the county board of supervisors pursuant to
26 subdivision (a) of Section 3451, may determine additional
27 appropriate conditions of supervision listed in Section 3453
28 consistent with public safety, including the use of continuous
29 electronic monitoring as defined in Section 1210.7, order the
30 provision of appropriate rehabilitation and treatment services,
31 determine appropriate incentives, and determine and order
32 appropriate responses to alleged violations, which can include, but
33 shall not be limited to, immediate, structured, and intermediate
34 sanctions up to and including referral to a reentry court pursuant
35 to Section 3015, or flash incarceration in a county jail. Periods of
36 flash incarceration are encouraged as one method of punishment
37 for violations of an offender’s condition of postrelease supervision.

38 (c) “Flash incarceration” is a period of detention in county jail
39 due to a violation of an offender’s conditions of postrelease
40 supervision. The length of the detention period can range between

1 one and 10 consecutive days. Flash incarceration is a tool that may
2 be used by each county agency responsible for postrelease
3 supervision. Shorter, but if necessary more frequent, periods of
4 detention for violations of an offender's postrelease supervision
5 conditions shall appropriately punish an offender while preventing
6 the disruption in a work or home establishment that typically arises
7 from longer term revocations.

8 SEC. 30. Section 3455 of the Penal Code is amended to read:

9 3455. (a) If the supervising county agency has determined,
10 following application of its assessment processes, that intermediate
11 sanctions as authorized in subdivision (b) of Section 3454 are not
12 appropriate, the supervising county agency shall petition the
13 revocation hearing officer appointed pursuant to Section 71622.5
14 of the Government Code to revoke and terminate postrelease
15 supervision. At any point during the process initiated pursuant to
16 this section, a person may waive, in writing, his or her right to
17 counsel, admit the violation of his or her postrelease supervision,
18 waive a court hearing, and accept the proposed modification of
19 his or her postrelease supervision. The petition shall include a
20 written report that contains additional information regarding the
21 petition, including the relevant terms and conditions of postrelease
22 supervision, the circumstances of the alleged underlying violation,
23 the history and background of the violator, and any
24 recommendations. The Judicial Council shall adopt forms and
25 rules of court to establish uniform statewide procedures to
26 implement this subdivision, including the minimum contents of
27 supervision agency reports. Upon a finding that the person has
28 violated the conditions of postrelease supervision, the revocation
29 hearing officer shall have authority to do all of the following:

30 (1) Return the person to postrelease supervision with
31 modifications of conditions, if appropriate, including a period of
32 incarceration in county jail.

33 (2) Revoke postrelease supervision and order the person to
34 confinement in the county jail.

35 (3) Refer the person to a reentry court pursuant to Section 3015
36 or other evidence-based program in the court's discretion.

37 (4) At any time during the period of postrelease supervision, if
38 any peace officer has probable cause to believe a person subject
39 to postrelease community supervision is violating any term or
40 condition of his or her release, the officer may, without a warrant

1 or other process, arrest the person and bring him or her before the
2 supervising county agency established by the county board of
3 supervisors pursuant to subdivision (a) of Section 3451.
4 Additionally, an officer employed by the supervising county agency
5 may seek a warrant and a court or its designated hearing officer
6 appointed pursuant to Section 71622.5 of the Government Code
7 shall have the authority to issue a warrant for that person's arrest.

8 (5) The court or its designated hearing officer shall have the
9 authority to issue a warrant for any person who is the subject of a
10 petition filed under this section who has failed to appear for a
11 hearing on the petition or for any reason in the interests of justice,
12 or to remand to custody a person who does appear at a hearing on
13 the petition for any reason in the interests of justice.

14 (b) The revocation hearing shall be held within a reasonable
15 time after the filing of the revocation petition. Based upon a
16 showing of a preponderance of the evidence that a person under
17 supervision poses an unreasonable risk to public safety, or the
18 person may not appear if released from custody, or for any reason
19 in the interests of justice, the supervising county agency shall have
20 the authority to make a determination whether the person should
21 remain in custody pending a revocation hearing, and upon that
22 determination, may order the person confined pending a revocation
23 hearing.

24 (c) Confinement pursuant to paragraphs (1) and (2) of
25 subdivision (a) shall not exceed a period of 180 days in the county
26 jail.

27 (d) A person shall not remain under supervision or in custody
28 pursuant to this title on or after three years from the date of the
29 person's initial entry onto postrelease supervision, except when a
30 bench or arrest warrant has been issued by a court or its designated
31 hearing officer and the person has not appeared. During the time
32 the warrant is outstanding the supervision period shall be tolled
33 and when the person appears before the court or its designated
34 hearing officer the supervision period may be extended for a period
35 equivalent to the time tolled.

36 SEC. 31. Section 3456 of the Penal Code is amended to read:

37 3456. (a) The county agency responsible for postrelease
38 supervision, as established by the county board of supervisors
39 pursuant to subdivision (a) of Section 3451, shall maintain

1 postrelease supervision over a person under postrelease supervision
2 pursuant to this title until one of the following events occurs:

3 (1) The person has been subject to postrelease supervision
4 pursuant to this title for three years at which time the offender shall
5 be immediately discharged from postrelease supervision.

6 (2) Any person on postrelease supervision for six consecutive
7 months with no violations of his or her conditions of postrelease
8 supervision that result in a custodial sanction may be considered
9 for immediate discharge by the supervising county.

10 (3) The person who has been on postrelease supervision
11 continuously for one year with no violations of his or her conditions
12 of postrelease supervision that result in a custodial sanction shall
13 be discharged from supervision within 30 days.

14 (4) Jurisdiction over the person has been terminated by operation
15 of law.

16 (5) Jurisdiction is transferred to another supervising county
17 agency.

18 (6) Jurisdiction is terminated by the revocation hearing officer
19 upon a petition to revoke and terminate supervision by the
20 supervising county agency.

21 (b) Time during which a person on postrelease supervision is
22 suspended because the person has absconded shall not be credited
23 toward any period of postrelease supervision.

24 SEC. 32. Section 3460 is added to the Penal Code, to read:

25 3460. (a) Whenever a supervising agency determines that a
26 person subject to postrelease supervision pursuant to this chapter
27 no longer permanently resides within its jurisdiction, and a change
28 in residence was either approved by the supervising agency or did
29 not violate the terms and conditions of postrelease supervision,
30 the supervising agency shall transmit, within two weeks, any
31 information the agency received from the Department of
32 Corrections and Rehabilitation prior to the release of the person
33 in that jurisdiction to the designated supervising agency in the
34 county in which the person permanently resides.

35 (b) Upon verification of permanent residency, the receiving
36 supervising agency shall accept jurisdiction and supervision of the
37 person on postrelease supervision.

38 (c) For purposes of this section, residence means the place where
39 the person customarily lives exclusive of employment, school, or

1 other special or temporary purpose. A person may have only one
2 residence.

3 (d) No supervising agency shall be required to transfer
4 jurisdiction to another county unless the person demonstrates an
5 ability to establish permanent residency within another county
6 without violating the terms and conditions of postrelease
7 supervision.

8 SEC. 33. Section 3465 is added to the Penal Code, to read:

9 3465. Every person placed on postrelease community
10 supervision, and his or her residence and possessions, shall be
11 subject to search or seizure at any time of the day or night, with
12 or without a warrant, by an agent of the supervising county agency
13 or by a peace officer.

14 SEC. 34. Section 4000 of the Penal Code is amended to read:

15 4000. The common jails in the several counties of this State
16 are kept by the sheriffs of the counties in which they are
17 respectively situated, and are used as follows:

18 1. For the detention of persons committed in order to secure
19 their attendance as witnesses in criminal cases;

20 2. For the detention of persons charged with crime and
21 committed for trial;

22 3. For the confinement of persons committed for contempt, or
23 upon civil process, or by other authority of law;

24 4. For the confinement of persons sentenced to imprisonment
25 therein upon a conviction for crime.

26 5. For the confinement of persons pursuant to subdivision (b)
27 of Section 3454 for a violation of the terms and conditions of their
28 postrelease community supervision.

29 SEC. 35. Section 4019 of the Penal Code, as amended by
30 Section 53 of Chapter 39 of the Statutes of 2011, is amended to
31 read:

32 4019. (a) The provisions of this section shall apply in all of
33 the following cases:

34 (1) When a prisoner is confined in or committed to a county
35 jail, industrial farm, or road camp, or any city jail, industrial farm,
36 or road camp, including all days of custody from the date of arrest
37 to the date on which the serving of the sentence commences, under
38 a judgment of imprisonment, or a fine and imprisonment until the
39 fine is paid in a criminal action or proceeding.

1 (2) When a prisoner is confined in or committed to the county
2 jail, industrial farm, or road camp or any city jail, industrial farm,
3 or road camp as a condition of probation after suspension of
4 imposition of a sentence or suspension of execution of sentence,
5 in a criminal action or proceeding.

6 (3) When a prisoner is confined in or committed to the county
7 jail, industrial farm, or road camp or any city jail, industrial farm,
8 or road camp for a definite period of time for contempt pursuant
9 to a proceeding, other than a criminal action or proceeding.

10 (4) When a prisoner is confined in a county jail, industrial farm,
11 or road camp, or a city jail, industrial farm, or road camp following
12 arrest and prior to the imposition of sentence for a felony
13 conviction.

14 (5) When a prisoner is confined in a county jail, industrial farm,
15 or road camp, or a city jail, industrial farm, or road camp as part
16 of custodial sanction imposed following a violation of postrelease
17 community supervision or parole.

18 (6) When a prisoner is confined in a county jail, industrial farm,
19 or road camp, or a city jail, industrial farm, or road camp as a result
20 of a sentence imposed pursuant to subdivision (h) of Section 1170.

21 (b) Subject to the provisions of subdivision (d), for each four-day
22 period in which a prisoner is confined in or committed to a facility
23 as specified in this section, one day shall be deducted from his or
24 her period of confinement unless it appears by the record that the
25 prisoner has refused to satisfactorily perform labor as assigned by
26 the sheriff, chief of police, or superintendent of an industrial farm
27 or road camp.

28 (c) For each four-day period in which a prisoner is confined in
29 or committed to a facility as specified in this section, one day shall
30 be deducted from his or her period of confinement unless it appears
31 by the record that the prisoner has not satisfactorily complied with
32 the reasonable rules and regulations established by the sheriff,
33 chief of police, or superintendent of an industrial farm or road
34 camp.

35 (d) Nothing in this section shall be construed to require the
36 sheriff, chief of police, or superintendent of an industrial farm or
37 road camp to assign labor to a prisoner if it appears from the record
38 that the prisoner has refused to satisfactorily perform labor as
39 assigned or that the prisoner has not satisfactorily complied with

1 the reasonable rules and regulations of the sheriff, chief of police,
2 or superintendent of any industrial farm or road camp.

3 (e) No deduction may be made under this section unless the
4 person is committed for a period of four days or longer.

5 (f) It is the intent of the Legislature that if all days are earned
6 under this section, a term of four days will be deemed to have been
7 served for every two days spent in actual custody.

8 (g) The changes in this section as enacted by the act that added
9 this subdivision shall apply to prisoners who are confined to a
10 county jail, city jail, industrial farm, or road camp for a crime
11 committed on or after the effective date of that act.

12 (h) The changes to this section enacted by the act that added
13 this subdivision shall apply prospectively and shall apply to
14 prisoners who are confined to a county jail, city jail, industrial
15 farm, or road camp for a crime committed on or after October 1,
16 2011. Any days earned by a prisoner prior to October 1, 2011,
17 shall be calculated at the rate required by the prior law.

18 (i) This section shall not apply, and no credits may be earned,
19 for periods of flash incarceration imposed pursuant to Section
20 3000.08 or 3454.

21 SEC. 36. Section 4019.2 is added to the Penal Code, to read:

22 4019.2. (a) Notwithstanding any other law, any inmate
23 sentenced to county jail assigned to a conservation camp by a
24 sheriff and who is eligible to earn one day of credit for every one
25 day of incarceration pursuant to Section 4019 shall instead earn
26 two days of credit for every one day of service.

27 (b) Notwithstanding any other law, any inmate who has
28 completed training for assignment to a conservation camp or to a
29 state or county facility as an inmate firefighter or who is assigned
30 to a county or state correctional institution as an inmate firefighter
31 and who is eligible to earn one day of credit for every one day of
32 incarceration pursuant to Section 4019 shall instead earn two days
33 of credit for every one day served in that assignment or after
34 completing that training.

35 (c) In addition to credits granted pursuant to subdivision (a) or
36 (b), inmates who have successfully completed training for
37 firefighter assignments shall receive a credit reduction from his or
38 her term of confinement.

39 (d) The credits authorized in subdivisions (b) and (c) shall only
40 apply to inmates who are eligible after October 1, 2011.

1 SEC. 37. Section 4115.56 is added to the Penal Code, to read:

2 4115.56. (a) Upon agreement with the sheriff or director of
3 the county department of corrections, a board of supervisors may
4 enter into a contract with the Department of Corrections and
5 Rehabilitation to house inmates who are within 60 days or less of
6 release from the state prison to a county jail facility for the purpose
7 of reentry and community transition purposes.

8 (b) When housed in county facilities, inmates shall be under the
9 legal custody and jurisdiction of local county facilities and not
10 under the jurisdiction of the Department of Corrections and
11 Rehabilitation.

12 SEC. 38. Section 4501.1 of the Penal Code, as amended by
13 Section 484 of Chapter 15 of the Statutes of 2011, is amended to
14 read:

15 4501.1. (a) Every person confined in the state prison who
16 commits a battery by gassing upon the person of any peace officer,
17 as defined in Chapter 4.5 (commencing with Section 830) of Title
18 3 of Part 2, or employee of the state prison is guilty of aggravated
19 battery and shall be punished by imprisonment in a county jail or
20 by imprisonment in the state prison for two, three, or four years.
21 Every state prison inmate convicted of a felony under this section
22 shall serve his or her term of imprisonment as prescribed in Section
23 4501.5.

24 (b) For purposes of this section, “gassing” means intentionally
25 placing or throwing, or causing to be placed or thrown, upon the
26 person of another, any human excrement or other bodily fluids or
27 bodily substances or any mixture containing human excrement or
28 other bodily fluids or bodily substances that results in actual contact
29 with the person’s skin or membranes.

30 (c) The warden or other person in charge of the state prison
31 shall use every available means to immediately investigate all
32 reported or suspected violations of subdivision (a), including, but
33 not limited to, the use of forensically acceptable means of
34 preserving and testing the suspected gassing substance to confirm
35 the presence of human excrement or other bodily fluids or bodily
36 substances. If there is probable cause to believe that the inmate
37 has violated subdivision (a), the chief medical officer of the state
38 prison or his or her designee, may, when he or she deems it
39 medically necessary to protect the health of an officer or employee
40 who may have been subject to a violation of this section, order the

1 inmate to receive an examination or test for hepatitis or tuberculosis
2 or both hepatitis and tuberculosis on either a voluntary or
3 involuntary basis immediately after the event, and periodically
4 thereafter as determined to be necessary by the medical officer in
5 order to ensure that further hepatitis or tuberculosis transmission
6 does not occur. These decisions shall be consistent with an
7 occupational exposure as defined by the Center for Disease Control
8 and Prevention. The results of any examination or test shall be
9 provided to the officer or employee who has been subject to a
10 reported or suspected violation of this section. Nothing in this
11 subdivision shall be construed to otherwise supersede the operation
12 of Title 8 (commencing with Section 7500). Any person performing
13 tests, transmitting test results, or disclosing information pursuant
14 to this section shall be immune from civil liability for any action
15 taken in accordance with this section.

16 (d) The warden or other person in charge of the state prison
17 shall refer all reports for which there is probable cause to believe
18 that the inmate has violated subdivision (a) to the local district
19 attorney for prosecution.

20 (e) The Department of Corrections and Rehabilitation shall
21 report to the Legislature, by January 1, 2000, its findings and
22 recommendations on gassing incidents at the state prison and the
23 medical testing authorized by this section. The report shall include,
24 but not be limited to, all of the following:

25 (1) The total number of gassing incidents at each state prison
26 facility up to the date of the report.

27 (2) The disposition of each gassing incident, including the
28 administrative penalties imposed, the number of incidents that are
29 prosecuted, and the results of those prosecutions, including any
30 penalties imposed.

31 (3) A profile of the inmates who commit the aggravated
32 batteries, including the number of inmates who have one or more
33 prior serious or violent felony convictions.

34 (4) Efforts that the department has taken to limit these incidents,
35 including staff training and the use of protective clothing and
36 goggles.

37 (5) The results and costs of the medical testing authorized by
38 this section.

39 (f) Nothing in this section shall preclude prosecution under both
40 this section and any other provision of law.

1 SEC. 39. Section 4530 of the Penal Code, as amended by
2 Section 486 of Chapter 15 of the Statutes of 2011, is amended to
3 read:

4 4530. (a) Every prisoner confined in a state prison who, by
5 force or violence, escapes or attempts to escape therefrom and
6 every prisoner committed to a state prison who, by force or
7 violence, escapes or attempts to escape while being conveyed to
8 or from that prison or any other state prison, or any prison road
9 camp, prison forestry camp, or other prison camp or prison farm
10 or any other place while under the custody of prison officials,
11 officers or employees; or who, by force or violence, escapes or
12 attempts to escape from any prison road camp, prison forestry
13 camp, or other prison camp or prison farm or other place while
14 under the custody of prison officials, officers or employees; or
15 who, by force or violence, escapes or attempts to escape while at
16 work outside or away from prison under custody of prison officials,
17 officers, or employees, is punishable by imprisonment in the state
18 prison for a term of two, four, or six years. The second term of
19 imprisonment of a person convicted under this subdivision shall
20 commence from the time he or she would otherwise have been
21 discharged from prison. No additional probation report shall be
22 required with respect to that offense.

23 (b) Every prisoner who commits an escape or attempts an escape
24 as described in subdivision (a), without force or violence, is
25 punishable by imprisonment in the state prison for 16 months, or
26 two or three years to be served consecutively. No additional
27 probation report shall be required with respect to such offense.

28 (c) The willful failure of a prisoner who is employed or
29 continuing his education, or who is authorized to secure
30 employment or education, or who is temporarily released pursuant
31 to Section 2690, 2910, or 6254, or Section 3306 of the Welfare
32 and Institutions Code, to return to the place of confinement not
33 later than the expiration of a period during which he or she is
34 authorized to be away from the place of confinement, is an escape
35 from the place of confinement punishable as provided in this
36 section. A conviction of a violation of this subdivision, not
37 involving force or violence, shall not be charged as a prior felony
38 conviction in any subsequent prosecution for a public offense.

1 SEC. 40. Section 12021.5 of the Penal Code, as amended by
2 Section 504 of Chapter 15 of the Statutes of 2011, is amended to
3 read:

4 12021.5. (a) Every person who carries a loaded or unloaded
5 firearm on his or her person, or in a vehicle, during the commission
6 or attempted commission of any street gang crimes described in
7 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
8 the felony or attempted felony, be punished by an additional term
9 of imprisonment pursuant to subdivision (h) of Section 1170 for
10 one, two, or three years in the court's discretion. The court shall
11 impose the middle term unless there are circumstances in
12 aggravation or mitigation. The court shall state the reasons for its
13 enhancement choice on the record at the time of sentence.

14 (b) Every person who carries a loaded or unloaded firearm
15 together with a detachable shotgun magazine, a detachable pistol
16 magazine, a detachable magazine, or a belt-feeding device on his
17 or her person, or in a vehicle, during the commission or attempted
18 commission of any street gang crimes described in subdivision (a)
19 or (b) of Section 186.22, shall, upon conviction of the felony or
20 attempted felony, be punished by an additional term of
21 imprisonment in the state prison for two, three, or four years in
22 the court's discretion. The court shall impose the middle term
23 unless there are circumstances in aggravation or mitigation. The
24 court shall state the reasons for its enhancement choice on the
25 record at the time of sentence.

26 (c) As used in this section, the following definitions shall apply:

27 (1) "Detachable magazine" means a device that is designed or
28 redesigned to do all of the following:

29 (A) To be attached to a rifle that is designed or redesigned to
30 fire ammunition.

31 (B) To be attached to, and detached from, a rifle that is designed
32 or redesigned to fire ammunition.

33 (C) To feed ammunition continuously and directly into the
34 loading mechanism of a rifle that is designed or redesigned to fire
35 ammunition.

36 (2) "Detachable pistol magazine" means a device that is
37 designed or redesigned to do all of the following:

38 (A) To be attached to a semiautomatic firearm that is not a rifle
39 or shotgun that is designed or redesigned to fire ammunition.

1 (B) To be attached to, and detached from, a firearm that is not
2 a rifle or shotgun that is designed or redesigned to fire ammunition.

3 (C) To feed ammunition continuously and directly into the
4 loading mechanism of a firearm that is not a rifle or a shotgun that
5 is designed or redesigned to fire ammunition.

6 (3) “Detachable shotgun magazine” means a device that is
7 designed or redesigned to do all of the following:

8 (A) To be attached to a firearm that is designed or redesigned
9 to fire a fixed shotgun shell through a smooth or rifled bore.

10 (B) To be attached to, and detached from, a firearm that is
11 designed or redesigned to fire a fixed shotgun shell through a
12 smooth bore.

13 (C) To feed fixed shotgun shells continuously and directly into
14 the loading mechanism of a firearm that is designed or redesigned
15 to fire a fixed shotgun shell.

16 (4) “Belt-feeding device” means a device that is designed or
17 redesigned to continuously feed ammunition into the loading
18 mechanism of a machinegun or a semiautomatic firearm.

19 (5) “Rifle” shall have the same meaning as specified in Section
20 17090.

21 (6) “Shotgun” shall have the same meaning as specified in
22 Section 17190.

23 (d) This section shall become operative on January 1, 2012.

24 SEC. 41. Section 12025 of the Penal Code, as amended by
25 Section 63 of Chapter 39 of the Statutes of 2011, is amended to
26 read:

27 12025. (a) A person is guilty of carrying a concealed firearm
28 when he or she does any of the following:

29 (1) Carries concealed within any vehicle which is under his or
30 her control or direction any pistol, revolver, or other firearm
31 capable of being concealed upon the person.

32 (2) Carries concealed upon his or her person any pistol, revolver,
33 or other firearm capable of being concealed upon the person.

34 (3) Causes to be carried concealed within any vehicle in which
35 he or she is an occupant any pistol, revolver, or other firearm
36 capable of being concealed upon the person.

37 (b) Carrying a concealed firearm in violation of this section is
38 punishable, as follows:

39 (1) Where the person previously has been convicted of any
40 felony, or of any crime made punishable by this chapter, as a felony

1 punishable by imprisonment pursuant to subdivision (h) of Section
2 1170.

3 (2) Where the firearm is stolen and the person knew or had
4 reasonable cause to believe that it was stolen, as a felony
5 punishable by imprisonment pursuant to subdivision (h) of Section
6 1170.

7 (3) Where the person is an active participant in a criminal street
8 gang, as defined in subdivision (a) of Section 186.22, under the
9 Street Terrorism Enforcement and Prevention Act (Chapter 11
10 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

11 (4) Where the person is not in lawful possession of the firearm,
12 as defined in this section, or the person is within a class of persons
13 prohibited from possessing or acquiring a firearm pursuant to
14 Section 12021 or 12021.1 of this code or Section 8100 or 8103 of
15 the Welfare and Institutions Code, as a felony in the state prison.

16 (5) Where the person has been convicted of a crime against a
17 person or property, or of a narcotics or dangerous drug violation,
18 by imprisonment pursuant to subdivision (h) of Section 1170, or
19 by imprisonment in a county jail not to exceed one year, by a fine
20 not to exceed one thousand dollars (\$1,000), or by both that
21 imprisonment and fine.

22 (6) By imprisonment pursuant to subdivision (h) of Section
23 1170, or by imprisonment in a county jail not to exceed one year,
24 by a fine not to exceed one thousand dollars (\$1,000), or by both
25 that fine and imprisonment if both of the following conditions are
26 met:

27 (A) Both the pistol, revolver, or other firearm capable of being
28 concealed upon the person and the unexpended ammunition capable
29 of being discharged from that firearm are either in the immediate
30 possession of the person or readily accessible to that person, or
31 the pistol, revolver, or other firearm capable of being concealed
32 upon the person is loaded as defined in subdivision (g) of Section
33 12031.

34 (B) The person is not listed with the Department of Justice
35 pursuant to paragraph (1) of subdivision (c) of Section 11106, as
36 the registered owner of that pistol, revolver, or other firearm
37 capable of being concealed upon the person.

38 (7) In all cases other than those specified in paragraphs (1) to
39 (6), inclusive, by imprisonment in a county jail not to exceed one

1 year, by a fine not to exceed one thousand dollars (\$1,000), or by
2 both that imprisonment and fine.

3 (c) A peace officer may arrest a person for a violation of
4 paragraph (6) of subdivision (b) if the peace officer has probable
5 cause to believe that the person is not listed with the Department
6 of Justice pursuant to paragraph (1) of subdivision (c) of Section
7 11106 as the registered owner of the pistol, revolver, or other
8 firearm capable of being concealed upon the person, and one or
9 more of the conditions in subparagraph (A) of paragraph (6) of
10 subdivision (b) is met.

11 (d) (1) Every person convicted under this section who
12 previously has been convicted of a misdemeanor offense
13 enumerated in Section 12001.6 shall be punished by imprisonment
14 in a county jail for at least three months and not exceeding six
15 months, or, if granted probation, or if the execution or imposition
16 of sentence is suspended, it shall be a condition thereof that he or
17 she be imprisoned in a county jail for at least three months.

18 (2) Every person convicted under this section who has
19 previously been convicted of any felony, or of any crime made
20 punishable by this chapter, if probation is granted, or if the
21 execution or imposition of sentence is suspended, it shall be a
22 condition thereof that he or she be imprisoned in a county jail for
23 not less than three months.

24 (e) The court shall apply the three-month minimum sentence
25 as specified in subdivision (d), except in unusual cases where the
26 interests of justice would best be served by granting probation or
27 suspending the imposition or execution of sentence without the
28 minimum imprisonment required in subdivision (d) or by granting
29 probation or suspending the imposition or execution of sentence
30 with conditions other than those set forth in subdivision (d), in
31 which case, the court shall specify on the record and shall enter
32 on the minutes the circumstances indicating that the interests of
33 justice would best be served by that disposition.

34 (f) Firearms carried openly in belt holsters are not concealed
35 within the meaning of this section.

36 (g) For purposes of this section, "lawful possession of the
37 firearm" means that the person who has possession or custody of
38 the firearm either lawfully owns the firearm or has the permission
39 of the lawful owner or a person who otherwise has apparent
40 authority to possess or have custody of the firearm. A person who

1 takes a firearm without the permission of the lawful owner or
2 without the permission of a person who has lawful custody of the
3 firearm does not have lawful possession of the firearm.

4 (h) (1) The district attorney of each county shall submit annually
5 a report on or before June 30, to the Attorney General consisting
6 of profiles by race, age, gender, and ethnicity of any person charged
7 with a felony or a misdemeanor under this section and any other
8 offense charged in the same complaint, indictment, or information.

9 (2) The Attorney General shall submit annually, a report on or
10 before December 31, to the Legislature compiling all of the reports
11 submitted pursuant to paragraph (1).

12 (3) This subdivision shall remain operative until January 1,
13 2005, and as of that date shall be repealed.

14 SEC. 42. Item 5225-007-0001 of Section 2.00 of the Budget
15 Act of 2011 is amended to read:

16
17 5225-007-0001—For support of Department of Corrections and
18 Rehabilitation..... 95,254,000

19 Provisions:

- 20 1. The Director of Finance shall reduce this item by
21 \$54,200,000 to reflect the portion of realignment sav-
22 ings to be achieved through the reduction or elimina-
23 tion of contracts with private entities for in-state
24 housing of state inmates. No other item of appropri-
25 ation may be used to pay for the costs of those contracts.

26
27 SEC. 43. Section 9 of Chapter 136 of the Statutes of 2011 is
28 amended to read:

29 SEC. 9. (a) Section 7 of this act shall remain operative until
30 July 1, 2012.

31 (b) Section 8 of this act shall become operative on July 1, 2012.

32 SEC. 44. An amount of one thousand dollars (\$1,000) is
33 provided to the Department of Corrections and Rehabilitation for
34 the purpose of state operations in the 2011–12 fiscal year, payable
35 from the General Fund.

36 SEC. 45. It is the intent of the Legislature to allow the
37 Department of Corrections and Rehabilitation additional flexibility
38 in managing its adult population following the enactment of 2011
39 Realignment Legislation. Enactment of this measure shall constitute

1 the approval required by Section 2 of Chapter 706 of the statutes
2 of 2007.

3 SEC. 46. This act shall not become operative until October 1,
4 2011, and only if Chapter 15 of the statutes of 2011 becomes
5 operative.

6 SEC. 47. This act is a bill providing for appropriations related
7 to the Budget Bill within the meaning of subdivision (e) of Section
8 12 of Article IV of the California Constitution, has been identified
9 as related to the budget in the Budget Bill, and shall take effect
10 immediately.

11 SEC. 48. (a) Section 12.1 of this bill incorporates amendments
12 to Section 1170 of the Penal Code proposed by both this bill and
13 Senate Bill 9. It shall only become operative if (1) both bills are
14 enacted and become effective on or before January 1, 2012, (2)
15 each bill amends Section 1170 of the Penal Code, and (3) Senate
16 Bill 576 is not enacted or as enacted does not amend that section,
17 and (4) this bill is enacted after Senate Bill 9, in which case
18 Sections 12, 12.2, and 12.3 of this bill shall not become operative.

19 (b) Section 12.2 of this bill incorporates amendments to Section
20 1170 of the Penal Code proposed by both this bill and Senate Bill
21 576. It shall only become operative if (1) both bills are enacted
22 and become effective on or before January 1, 2012, (2) each bill
23 amends Section 1170 of the Penal Code, (3) Senate Bill 9 is not
24 enacted or as enacted does not amend that section, and (4) this bill
25 is enacted after Senate Bill 576 in which case Sections 12, 12.1,
26 and 12.3 of this bill shall not become operative.

27 (c) Section 12.3 of this bill incorporates amendments to Section
28 1170 of the Penal Code proposed by this bill, Senate Bill 9, and
29 Senate Bill 576. It shall only become operative if (1) all three bills
30 are enacted and become effective on or before January 1, 2012,
31 (2) all three bills amend Section 1170 of the Penal Code, and (3)
32 this bill is enacted after Senate Bill 9 and Senate Bill 576, in which
33 case Sections 12, 12.1, and 12.2 of this bill shall not become
34 operative.

35 SEC. 49. (a) Section 12.5 of this bill incorporates amendments
36 to Section 1170 of the Penal Code proposed by both this bill and
37 Senate Bill 9. It shall only become operative if (1) both bills are
38 enacted and become effective on or before January 1, 2012, (2)
39 each bill amends Section 1170 of the Penal Code, and (3) Senate
40 Bill 576 is not enacted or as enacted does not amend that section,

1 and (4) this bill is enacted after Senate Bill 9, in which case
2 Sections 12.4, 12.6, and 12.7 of this bill shall not become operative.

3 (b) Section 12.6 of this bill incorporates amendments to Section
4 1170 of the Penal Code proposed by both this bill and Senate Bill
5 576. It shall only become operative if (1) both bills are enacted
6 and become effective on or before January 1, 2012, (2) each bill
7 amends Section 1170 of the Penal Code, (3) Senate Bill 9 is not
8 enacted or as enacted does not amend that section, and (4) this bill
9 is enacted after Senate Bill 576 in which case Sections 12.4, 12.5,
10 and 12.7 of this bill shall not become operative.

11 (c) Section 12.7 of this bill incorporates amendments to Section
12 1170 of the Penal Code proposed by this bill, Senate Bill 9, and
13 Senate Bill 576. It shall only become operative if (1) all three bills
14 are enacted and become effective on or before January 1, 2012,
15 (2) all three bills amend Section 1170 of the Penal Code, and (3)
16 this bill is enacted after Senate Bill 9 and Senate Bill 576, in which
17 case Sections 12.4, 12.5 and 12.6 of this bill shall not become
18 operative.

19 SEC. 50. Sections 13.1 and 13.3 of this bill incorporate
20 amendments to Section 1170.1 of the Penal Code proposed by
21 both this bill and Senate Bill 576. Those sections shall only become
22 operative if (1) both bills are enacted and become effective on or
23 before January 1, 2012, (2) each bill amends Section 1170.1 of the
24 Penal Code, and (3) this bill is enacted after Senate Bill 576, in
25 which case Sections 13 and 13.2 of this bill shall not become
26 operative.

27 SEC. 51. If the Commission on State Mandates determines
28 that this act contains costs mandated by the state, reimbursement
29 to local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.

32 SEC. 52. This act addresses the fiscal emergency declared and
33 reaffirmed by the Governor by proclamation on January 20, 2011,
34 pursuant to subdivision (f) of Section 10 of Article IV of the
35 California Constitution.

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